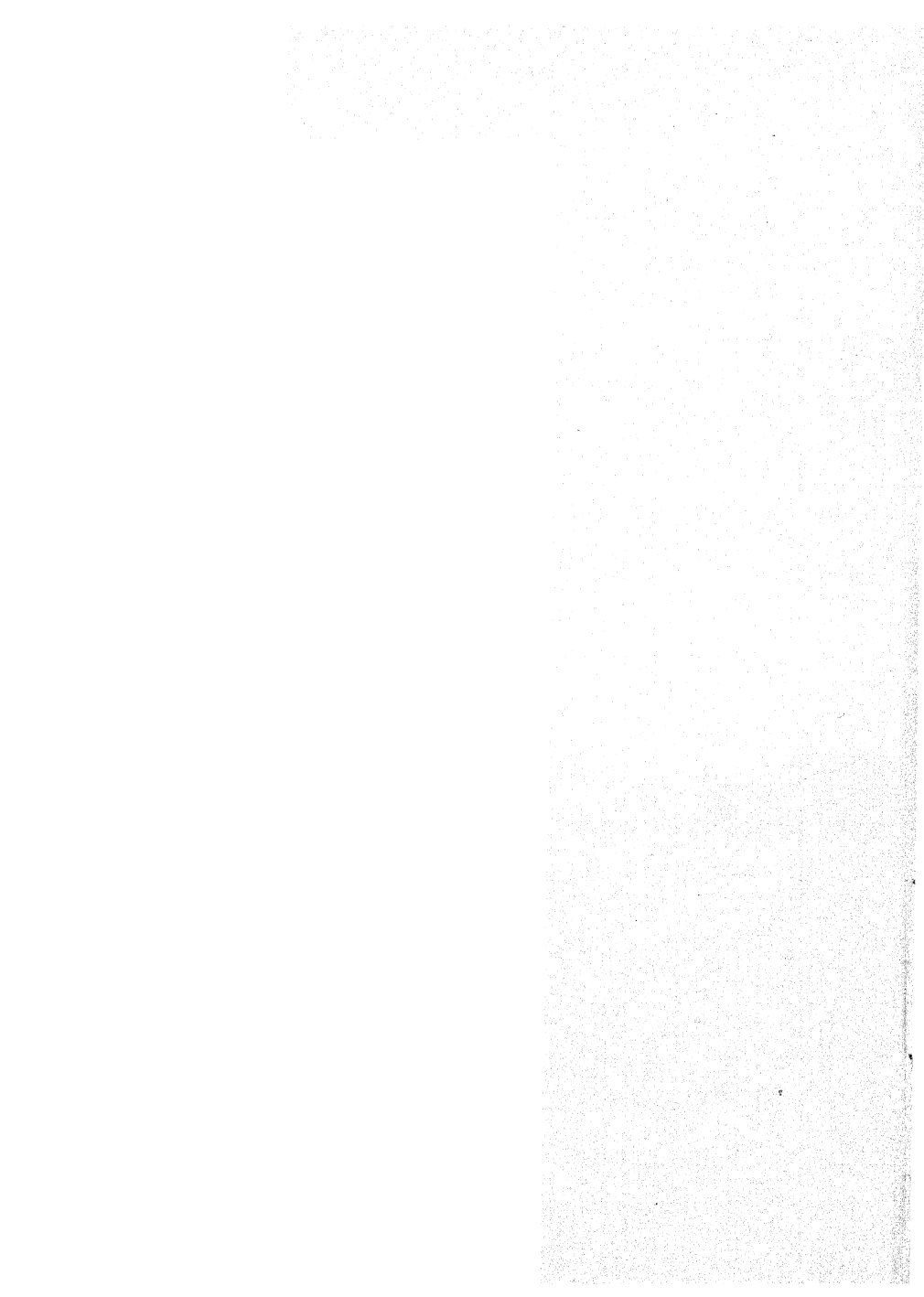


**SANITARY
ADMINISTRATION**



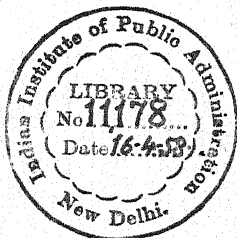
SANITARY ADMINISTRATION

A PRACTICAL HANDBOOK FOR THE
USE OF PUBLIC HEALTH OFFICIALS,
STUDENTS, AND OTHERS INTERESTED
IN PUBLIC HEALTH

BY
STEWART SWIFT, M.B.E.,

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Author of "Housing Administration."

SECOND EDITION



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THE ENGLISH AND EMPIRE DIGEST.

After each case mentioned in the Table of Cases and in the text, in addition to the usual citation of the report, there will be found a reference to the volume, page, and number at which the case appears in the Digest. Thus :

Kirkdale Burial Board v. Liverpool Corpn., [1904] 1 Ch. 829 ;
33 Digest 55, 357.

HALSBURY'S COMPLETE STATUTES OF ENGLAND.

After each reference to a section of an Act there will be found a reference to the volume and page of Halsbury's Complete Statutes of England at which the text is printed in full. Thus :

Public Health Act, 1875, s. 285 ; 13 Halsbury's Statutes 744.

PREFACE TO THE SECOND EDITION.

ALTHOUGH the law relating to sanitary administration has remained substantially unaltered since the first edition of this book was issued in 1937, there have been a number of important statutes passed dealing with matters coming within the province of the sanitary officer. The most important of these is the Factories Act, 1937, and the Public Health (Drainage of Trade Premises) Act, 1937. The present edition contains the provisions of the new law relating to factories, drainage of trade premises and other matters that have been the subject of changes in law or procedure. In addition, reference is made to a number of the special emergency laws and regulations which may affect the work of sanitary officers.

The opportunity has been taken to revise the whole of the text, with the object of clarifying and amplifying the subject matter throughout the book. I trust the new edition will be found of use to all those engaged, in one way or another, in the work of sanitary administration, and particularly to my friends and colleagues in the local government service.

I am again indebted to the Controller of His Majesty's Stationery Office for permission to reproduce extracts from official publications.

Rural Water Supplies and Sewerage Bill.

After the new edition had been completed and the proofs checked, the Government introduced in Parliament the *Rural Water Supplies and Sewerage Bill*, designed to secure the provision of piped water supplies and sewerage schemes in rural areas, embodying the proposals contained in the White Paper, *A National Water Policy* (Cmd. 6515, April, 1944, H.M.S.O.). The Bill provides for the payment of Exchequer contributions

towards the expenses incurred by a local authority in providing a water supply in a rural locality, whether it is a new supply or an improvement of an existing supply, and in providing sewerage or sewage disposal schemes necessary in consequence of the provision, whether in the past or future, of a piped water supply. The total contributions are not to exceed £15 millions in the aggregate so far as England and Wales are concerned, and £6,375,000 in the case of Scotland. The obligation imposed on a local authority by section 111, Public Health Act, 1936 (see *post*, p. 156)—which requires every local authority to take steps to secure, so far as is reasonably practicable, that every house or school has available within a reasonable distance a sufficient supply of wholesome water for domestic purposes—is extended so as to secure the provision of a *pipéd* water supply in every rural locality and the extension of mains to points which will enable houses or schools to be connected thereto at a reasonable cost.

Butterworth's Sanitary Officers Library.

It will be noted that this volume forms No. 1 in the series entitled *Butterworth's Sanitary Officers Library*, which is designed to cover the whole of the official duties of sanitary officers. I am grateful to the publishers for issuing my books in this way and trust they will form a permanent part of the library of all those engaged in sanitary administration, either as officers of local authorities, teachers, or otherwise. I hope the present volume and those to follow will be of assistance to students preparing for the various professional examinations.

STEWART SWIFT.

OXFORD,

September, 1944.

PREFACE TO THE FIRST EDITION.

THE administration of the law relating to sanitation forms an important part of the work of sanitary authorities and their officers, especially sanitary inspectors and medical officers of health. Although the law relating thereto has been scattered amongst numerous Acts of Parliament, the Public Health Act, 1875, remained the principal enactment dealing with sanitary administration until the passing of the Public Health Act, 1936. The Act of 1936, which comes into operation on the 1st of October, 1937, repeals the sanitary provisions of the Act of 1875 and many of the amending Acts which appeared from time to time since the principal Act was passed. The new Act not only repeals the whole of the existing sanitary law but contains many important amendments and modifications.

Sanitary officers are compelled therefore to study the Act of 1936 with care, in order, not only to familiarise themselves with the sections of the new Act dealing with specific matters, but also to learn the changes in procedure incorporated in the new law.

The present time appears opportune therefore for the preparation of a book dealing with sanitary administration as affected by the Act of 1936 and this volume is an attempt to deal with the subject in a way which I trust will meet the needs of sanitary officers engaged in the administration of the new Act. "Sanitary Administration" is prepared on similar lines to "Housing Administration," which was published in 1934, and it is designed as a companion volume.

As with my former book, it is not my intention that "Sanitary Administration" should be considered as a substitute for any of the purely legal text-books which will deal

with the Public Health Act, 1936, from the standpoint of the lawyer. On the contrary, I trust it will find a place side by side with the law books, and be of some help to my colleagues in the public health service in assisting them to familiarise themselves with the new Act, and at the same time to relate law to administrative practice in such a way that they will be able to administer the new provisions with a minimum of trouble and anxiety. As in the case of "Housing Administration," I have included the text of the various sections of the statutes in the majority of instances, rather than making a precis which might not convey correctly the exact meaning of the sections.

I should like to point out that as the new Act does not become law until the 1st of October, 1937, it has been impossible to include information relating to the practical administration of the new provisions, and reference has had to be made to existing Model Byelaws, Circulars, Memoranda, etc., of the Ministry of Health, many of which will no doubt be revised before the Act becomes operative.

The present volume differs in an important particular from "Housing Administration," in that a Table of Cases is included and reference has been made in the text to the case law. I trust this new departure will not be considered an attempt to encroach upon the province of the lawyer, but I feel that the notes on cases should be helpful to sanitary officers in interpreting and administering the new law. I have endeavoured to state the facts of the cases without comment, my sole desire being to make the book of the fullest possible value to officials who are busily engaged, day by day, in the administration of many Acts of Parliament, not all of which are in sufficiently clear terms to obviate constant consideration and thought.

It has been impossible to devote much space to the purely practical and technical aspects of sanitary administration, but as there are numerous excellent text-books available dealing with sanitary engineering, hygiene and allied subjects, I feel no useful purpose would have been served in increasing considerably the size of the volume by dealing with those

matters. The law relating to factories and workshops is being revised at the present time, but as the new Factories Bill is not likely to become law before the 1st of July, 1938, and the final form of the Bill has not yet been determined, it has been deemed best to retain Chapter 14 in its original form.

Extracts from Acts of Parliament, together with byelaws, regulations, orders, circulars, and official memoranda, are included by kind permission of the Controller of His Majesty's Stationery Office.

STEWART SWIFT.

OXFORD,

July, 1937.

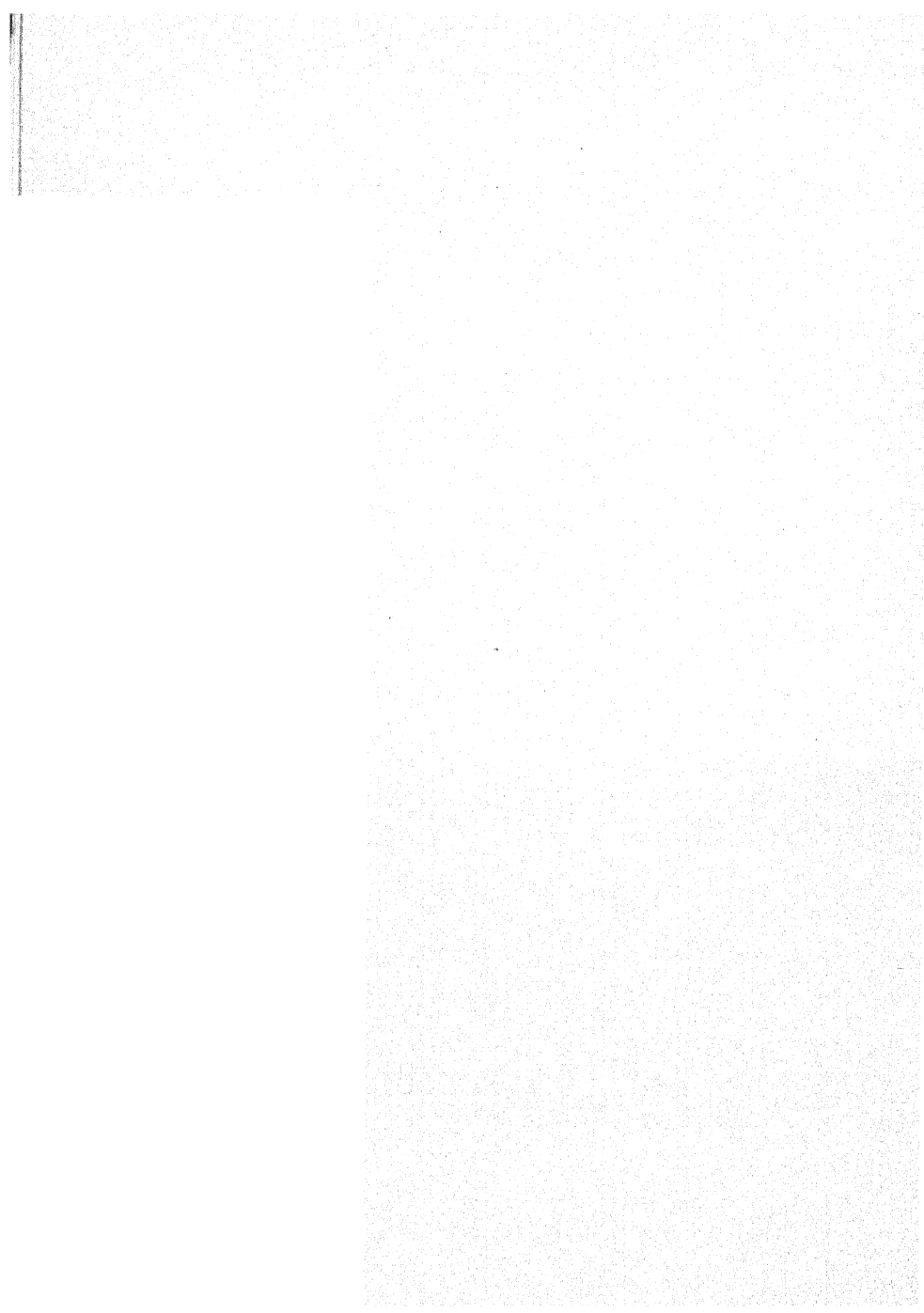


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SANITARY ADMINISTRATION.

PART I.

SANITARY LEGISLATION AND ADMINISTRATION.

CHAPTER 1.—SANITARY LEGISLATION.

INTRODUCTION.

Whilst it is true that in the earliest days of mankind, primitive attempts were made to protect human life from disease, it is a fact that Sanitary Administration—or Public Health to give it the widest possible description—is a product of comparatively recent times.

Sanitary administration is in fact a branch of the wider subject of Preventive Medicine or Public Health, but in the present volume it is confined to that section of hygiene or sanitary science relating to the environment. Sanitary Science is not an exact science. It embraces applications of chemistry and physics, physiology and pathology, bacteriology and entomology, engineering and building construction, epidemiology and, in some measure, sociology. Finally, it is welded together to form a more or less workable administrative machine by the various Acts of Parliament, known collectively, if somewhat loosely, as the Public Health Acts. Practitioners of the science of Public Health—sanitary officers—must of necessity be extremely catholic in their learning. In parts they are in turn something of the lawyer, the doctor, the builder, the chemist, the physicist, the veterinarian, the entomologist, the bacteriologist, the administrator, and finally, and above all, should be gifted with the capacity to understand the divergent types of human beings who constitute present-day society. Sanitary science therefore is not only a science, but an art, and those engaged in its administration must cultivate to the highest degree, the arts of their profession.

Sanitary administration, as a component part of the scheme of Preventive Medicine, is nowadays of less apparent importance than hitherto. It is interesting to compare the subjects coming within the sphere of Preventive Medicine

as detailed by the Royal Sanitary Commission of 1871, and as set out by Sir George Newman in 1926(a).

Requirements of the Royal Sanitary Commission, 1871.

- i—The supply of wholesome and sufficient water for drinking and washing.
- ii—The prevention of the pollution of water.
- iii—The provision of sewerage and utilisation of sewage.
- iv—The regulation of streets, highways, and new buildings.
- v—The healthiness of dwellings.
- vi—The removal of nuisances and refuse, and consumption of smoke.
- vii—The inspection of food.
- viii—The suppression of causes of diseases and regulations in case of epidemics.
- ix—The provision for the burial of the dead without injury to the living.
- x—The regulation of markets and public lighting of towns.
- xi—The registration of death and sickness.

Provisional Articles of a National Policy in Preventive Medicine, suggested by Sir George Newman, 1926.

- i—Heredity and race.
- ii—Maternity, and the care, protection and encouragement of the function of motherhood.
- iii—Infant welfare and the reduction of infant mortality.
- iv—The health and physique of the school child and adolescent.
- v—Sanitation of the environment, the control of the food supply and an improved personal and domestic life in the home.
- vi—Industrial hygiene, the health of the worker in the workshop.
- vii—The prevention and treatment of infectious disease.
- viii—The prevention and treatment of non-infectious disease.
- ix—The education of the people in hygiene.
- x—Research, inquiry and investigation, and the extension of the boundaries of knowledge.

Practically the whole of the essentials of the Royal Sanitary Commission are contained in paragraph (v) of Sir George Newman's Articles.

A century ago, the need for improvement in the environment of the people was of the most urgent importance. With the passage of one hundred years, many of the earlier problems have been brought to a satisfactory solution, but notwithstanding this fact, it remains true that without constant and insistent attention to the preservation of a satisfactory environment, the public would not long enjoy the benefits obtaining at the present time. The evils attendant upon bad sanitation need not be elaborated. It is sufficient to say that it is only by continued attention to the details of sanitary administration, that the existing conditions continue. No amount of

(a) Newman, G. (1926) "An Outline of the Practice of Preventive Medicine," London, 1926. H.M.S.O.

medical skill and practice will take the place of good sanitation. Sanitary administration has been the means not only of improving the amenities of all classes of the population, but it can claim also to have contributed in no small measure to the reduction of mortality and invalidity. The improvement in the environment—involving questions relating to drainage and water supply, scavenging, housing, food, etc.—has been followed by improvement in the vital statistics, and invariably good results in the one have been the prelude to changes of a favourable nature in the other.

The coming of the Industrial Revolution, towards the end of the Eighteenth Century, resulted in the formation of large urban areas and rapid changes in population. The evil results attendant upon this change in the life of the people quickly became apparent and it was not long before the more progressive leaders of the day were agitating for reforms. Probably the Municipal Corporations Act, 1835, laid the foundation for the present system of sanitary administration but the Nuisances Removal and Diseases Prevention Act of 1846, was the first Act dealing specifically with sanitary matters. This was a provisional Act, confirmed in 1848, and in the same year the first Public Health Act became law. In 1847, the Towns Improvement Clauses and Police Clauses Acts had been passed, which included numerous provisions dealing directly or indirectly with sanitation. In 1851, largely as a result of the efforts of Lord Shaftesbury, the Common Lodging Houses Act and the Labouring Classes Lodging Houses Act came on to the statute book, as the fore-runners of the series of special Acts dealing with housing. Other enactments followed in rapid succession, until finally the consolidating Public Health Act, 1875, brought within the compass of a single Act, the various provisions relating to public health which were scattered in numerous shorter Acts.

For over sixty years the Act of 1875 remained the basis of all public health and sanitary legislation, and when the major portion of it ceased to have effect on the 1st of October, 1937, an important period in the evolution of social legislation ended.

THE PUBLIC HEALTH ACT, 1936.

The Public Health Act, 1936 (in this volume referred to as "the Act of 1936") is the work of the Local Government and Public Health Consolidation Committee, which was appointed by the Minister of Health on the 8th of December, 1930, and whose labours first produced the Local Government Act, 1933. In considering the consolidation of the Public

Health Acts, the Committee classified the various enactments relating to Public Health, under the following headings:—(b)

- (a) provisions of a strictly public health character relating to the prevention and treatment of disease, that is, as regards environment, to such matters as drains and sewers, buildings, water supply and the abatement of nuisances, and as regards personal hygiene to such matters as the provision of hospitals, maternity centres, etc.;
- (b) provisions with regard to streets and building lines;
- (c) provisions dealing with food;
- (d) provisions dealing with public amenities—recreation grounds, open spaces, etc.;
- (e) provisions as to the licensing of hackney carriages, pleasure boats, servants' registries, etc.;
- (f) provisions dealing with burial and cremation;
- (g) provisions of a "police" character, *e.g.* offences in streets and places of public resort; and
- (h) provisions dealing with river pollution.

The Act of 1936 has been confined to those matters coming within the scope of paragraph (a), *supra*, and the Committee propose at a later date to issue separate Bills dealing with the remaining items (c). The Act of 1936 repealed, in part or in whole, the provisions relating to public health, contained in 47 Acts, and reduced something like 1,000 sections to an Act of 347 sections and two Schedules.

In addition to the Act of 1936, the following are the more important Acts dealing directly or indirectly with sanitary administration and referred to in the present volume.

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| (1) Factories Act, 1937— | Factories and work-places; bakehouses; and out-workers. (See chapter 14, <i>post</i> , p. 312.) |
| (2) Shops Act, 1934— | Sanitary condition of shops. (See chapter 15, <i>post</i> , p. 356.) |
| (3) Rag Flock Act, 1911— | Rag flock. (See chapter 14, <i>post</i> , p. 352.) |
| (4) Rivers Pollution Prevention Acts, 1876 and 1893— | River pollution. (See chapter 12, <i>post</i> , p. 282.) |
| (5) Housing Act, 1936— | Lodging houses. (See chapter 18, <i>post</i> , p. 403.)(d) |

(b) Local Government and Public Health Consolidation Committee, Second Interim Report, 1936, Cmd. 5059, p. 9.

(c) *E.g.*, Food and Drugs Act, 1938, consolidates the law relating to food.

(d) And see the author's "Housing Administration," 2nd Edition, 1938. Butterworth & Co.

(6) Local Government Act, 1933—

Local government administration generally.
(See chapter 4, *post*,
p. 52.)

BYELAWS.

In addition to the statute law, local authorities may adopt byelaws for a variety of purposes. Byelaws are one form of subordinate legislation, designed to enable authorities to deal in more or less detail with one particular matter. There have been many definitions of the term "byelaw," one of the most concise being, "A local law made, with due legal sanction, by a body of persons in respect of a matter specially referred to that body by Parliament" (*e*). A more extended definition was given by LORD RUSSELL OF KILLOWEN, C.J. (*f*), as follows—

"A byelaw of the class we are here considering, I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the byelaw, they would be free to do or not do as they pleased. Further it involves this consequence, if validly made, it has the force of law within the sphere of its legitimate operation."

The power to make byelaws is contained in numerous Acts of Parliament, but in every case they must be approved by the appropriate Minister of State (*g*). All byelaws made under the Act of 1936 must be confirmed by the Minister of Health (*h*).

Byelaws can only be made in express compliance with a particular statute, and deal with the matters referred to therein. The use of byelaws dealing with administrative details, tends to reduce the volume of statute law, and, at the same time, permits a local authority to have regard to any condition or circumstance peculiar to their district.

Subordinate legislation, as distinct from statute law, is subject to scrutiny by the courts, who may upset byelaws made by local authorities if such byelaws do not comply with certain requirements, including the following—

- i—they must be reasonable ;
- ii—certain in their terms, positive, and free from ambiguity ;

(*e*) Macmillan's "Local Government Law and Administration," 1934, Vol. 2, p. 359. Butterworth & Co.

(*f*) *Kruse v. Johnson*, [1898], 2 Q. B. 91 ; 13 Digest 327, 631.

(*g*) Known as the "Confirming Authority."

(*h*) Sect. 312. Public Health Act. 1936 : 29 Halsbury's Statutes 520.

- iii—*intra vires* of the authority by whom they are made ; and
- iv—not repugnant to the general law—statute or common.

There are many decided cases dealing with the validity of byelaws (*i*), from which it is now firmly established that to be valid a byelaw must satisfy the above requirements. If it does so, it is as effective as if it is on the statute book itself (*h*).

Byelaws made under statutory powers do not bind the Crown unless this is expressly or implicitly authorised by the statute (*l*).

With a view to assisting local authorities in preparing byelaws, the Ministry of Health have from time to time issued the following Model Series, which are used as a basis, being modified to suit local conditions. Copies of these Model Series of Byelaws may be obtained from H.M. Stationery Office, or from the Ministry of Health.

Model Byelaws and Regulations of the Ministry of Health (*m*).

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|---------|---|
| No. I | (<i>n</i>) The removal of house refuse and the cleansing of earth closets, privies, ashpits, and cesspools (Public Health Act, 1936, section 72 (4)). |
| No. Ia | (<i>n</i>) Duties in connection with the removal of house refuse, etc. (Public Health Act, 1936, section 72 (3)). |
| No. II | (<i>n</i>) For preventing the occurrence of nuisances from snow, filth, dust, ashes, and rubbish and for preventing the keeping of animals so as to be prejudicial to health (Public Health Act, 1936, section 81). |
| No. IIa | (<i>n</i>) Removal through streets of offensive or noxious matter or liquid (Public Health Act, 1936, section 82). |
| No. III | (<i>o</i>) Common lodging-houses (Public Health Act, 1936, section 240). |
| No. IV | (<i>p</i>) Buildings (Public Health Act, 1936, sections 61 and 62). |
| No. IVd | (<i>p</i>) New streets (Public Health Act, 1875, section 157). |
| No. V | (<i>n</i>) Markets (Food and Drugs Act, 1938, section 56 ; and Markets and Fairs Clauses Act, 1847, section 42). |
| No. VI | (<i>n</i>) Slaughterhouses (Food and Drugs Act, 1938, section |

(*i*) See "Byelaws of Local Authorities," by Schofield, 1939, chap. 3, pp. 26 *et seq.* Butterworth & Co.

(*h*) *Timothy v. Fenn* (1910), 74 J. P. 123 ; 22 Digest 315, 3080.

(*l*) *Gorton Local Board v. Prison Commrs.* (1887), reported, [1904] 2 K. B. 165, *n* ; 42 Digest 690, 1050 ; *Cooper v. Hawkins*, [1904] 2 K. B. 164 ; 42 Digest 692, 1075.

(*m*) Appendix to Memorandum of the Ministry of Health, "On sending byelaws or regulations for the preliminary approval of the Minister of Health," October, 1937.

(*n*) Octavo edition is priced and can be bought through any bookseller or directly from H.M.S.O.

(*o*) No priced edition of these models. Application for copies should be made to the Ministry of Health.

(*p*) No priced octavo edition of these models. The draft edition is priced and can be bought through any bookseller or directly from H.M.S.O.

- 58 ; and Towns Improvement Clauses Act, 1847, section 128).
- No. VIa (r) Public slaughterhouses (Food and Drugs Act, 1938, section 60 (2)).
- No. VII (q) Hackney carriages (Public Health Act, 1875, section 171 ; and Town Police Clauses Act, 1847, section 68).
- No. VIII (s) Public bathing (Public Health Act, 1936, section 231).
- No. VIIIA (q) Swimming baths and bathing pools (Public Health Act, 1936, section 233).
- No. IX (r) Baths, wash-houses, swimming baths and bathing places under the management of the local authority (Public Health Act, 1936, section 223).
- No. X (q) Pleasure grounds (Public Health Act, 1875, section 164).
- No. Xa (q) Recreation grounds, village greens, open spaces, or public walks (Local Government Act, 1894, section 8 (i) (d)).
- No. XI (q) Horses, ponies, mules or asses standing for hire (Public Health Act, 1875, section 172).
- No. XII (r) Pleasure boats and vessels (Public Health Act, 1875, section 172).
- No. XIII (r) Houses occupied or suitable for occupation by persons of the working classes (Housing Act, 1936, section 6).
- No. XIIIb (r) Houses let in lodgings (Housing Act, 1936, section 6).
- No. XIV (q) Cemeteries (Public Health Act, 1875, section 141 ; and Public Health (Interments) Act, 1879, section 2).
- No. XV (r) Mortuaries and post-mortem rooms (Public Health Act, 1936, section 198).
- No. XVI (r) Fish frying and offensive trades (Public Health Act, 1936, section 108).
- No. XVII Tents, vans, sheds and similar structures used for human habitation (Public Health Act, 1936, section 268).
- No. XVIII (r) Means of escape from fire in certain factories and workshops (Factories Act, 1937, section 35).
- No. XX For securing the decent lodging and accommodation of hop-pickers and other persons engaged temporarily in picking, gathering or lifting fruit, flowers, bulbs, roots or vegetables (Public Health Act, 1936, section 270).
- No. XXI (r) For preventing waste, undue consumption, misuse or contamination of water (Public Health Act, 1936, section 132, and local Acts).
- No. XXII (r) Underground rooms (Housing Act, 1936, section 12).
- No. XXIII (r) Wires, etc., connected with wireless installations (Public Health Act, 1925, section 26).
- No. XXIVa (r) Nursing homes (Public Health Act, 1936, section 190).
- No. XXV (q) Smoke abatement (Public Health Act, 1936, section 104 (I)).
- No. XXVI (q) Parking places (Public Health Act, 1925, section 68 ; and Restriction of Ribbon Development Act, 1935, section 16).
- No. XXVII (q) Public sanitary conveniences (Public Health Act, 1936, section 37).

(q) See note (n), p. 6, *ante*.

(r) See note (o), p. 6, *ante*.

(s) See note (p), p. 6, *ante*.

The following summary shows the sections of the Act of 1936 which authorise a local authority to adopt byelaws relating to the matters specified.

TABLE I.

Power to make Byelaws under the Public Health Act, 1936.

Section.	Subject matter.	Reference to text.
53(7)	Building byelaws may apply to any material specified, which are liable to deteriorate rapidly or are otherwise unsuitable for use in the construction of permanent buildings	390
61	Buildings and sanitation	9
62	Existing buildings	10
72(3)	Removal of house refuse	185
81(a)	Nuisances from snow, filth, dust, ashes and rubbish	192
81(b)	Keeping of animals	222
82	Removal of offensive matter or liquid through streets	194
87	Public sanitary conveniences	152
104(1)	Smoke—colour, density or content	274
104(2)	Provision of smokeless methods of heating and cooking in buildings other than private houses	274
108(1)	Trade of fish frying	258
108(2)	Offensive trades	258
132	Prevention of waste, misuse or contamination of water	169
190	Nursing homes	—
198	Mortuaries	307
223 }	Regulation of baths, washhouses, swimming	—
226 }	baths and bathing places	—
231	Public bathing	—
233	Swimming baths and bathing pools not under the control of the local authority	246
240	Common lodging houses	408
268(4)	Tents, vans, sheds and similar structures	396
270	Hop pickers' lodgings	402

Making of Byelaws.

The procedure with regard to the making of byelaws is laid down by section 250 of the Local Government Act, 1933(*t*), which prescribes in detail the steps to be taken by a local authority who wish to adopt byelaws under the Act of 1936. Where it is desired to make byelaws, this lengthy section should be studied in detail.

Byelaws with respect to buildings and sanitation.

Sections 61 to 71 of the Act of 1936 relate to byelaws with respect to buildings and sanitation. In the following paragraphs a short summary is given of these sections, but the subject of building byelaws is not directly a matter for inclusion in the present volume, and reference should be made to the Act for full details of the sections referred to.

Section 61 of the Act of 1936, *infra*, empowers a local authority to make byelaws with respect to buildings and sanitation, and if required to do so by the Minister of Health, byelaws under this section must be made by the authority.

Section 61, Public Health Act, 1936.—Byelaws as to buildings and sanitation.

- (1) Every local authority may and, if required by the Minister, shall make byelaws for regulating all or any of the following matters:—

(i) as regards buildings—

- (a) the construction of buildings, and the materials to be used in the construction of buildings;
- (b) the space about buildings, the lighting and ventilation of buildings, and the dimensions of rooms intended for human habitation;
- (c) the height of buildings; the height of chimneys, not being separate buildings, above the roof of the building of which they form part;

(ii) as regards works and fittings—

- (d) sanitary conveniences in connection with buildings; the drainage of buildings, including the means for conveying refuse water and water from roofs and from yards appurtenant to buildings; cess-pools and other means for the reception or disposal of foul matter in connection with buildings;
- (e) ashpits in connection with buildings;
- (f) wells, tanks and cisterns for the supply of water for human consumption in connection with buildings;
- (g) stoves and other fittings in buildings (not being electric stoves or fittings), in so far as byelaws with respect to such matters are required for the purposes of health and the prevention of fire;
- (h) private sewers; communications between drains and sewers and between sewers.

- (2) Byelaws made under this section may include provisions as to—

- (a) the giving of notices and the deposit of plans, sections, specifications and written particulars; and
- (b) the inspection of work; the testing of drains and sewers, and the taking by the local authority of samples of materials to be used in the construction of buildings, or in the execution of other works.

- (3) A local authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

In accordance with section 62, *infra*, byelaws may be made with respect to existing buildings.

Section 62, Public Health Act, 1936.—Application of certain byelaws to existing buildings.

- (1) Byelaws under sub-paragraphs (a), (b) and (c) of subsection (1) of the last preceding section may be made with respect to—
- (a) structural alterations or extensions of buildings, and buildings so far as affected by alterations or extensions;
 - (b) buildings or parts of buildings in cases where any material change, within the meaning of this section, takes place in the purposes for which a building or, as the case may be, a part of a building is used,
- and, so far as they relate to the matters mentioned in this subsection, may be made to apply to buildings erected before the date on which the byelaws came into force, but, save as aforesaid, shall not apply to buildings erected before that date.
- (2) For the purposes of this section, there shall be deemed to be a material change in the purposes for which a building, or part of a building, is used if—
- (a) a building, or a part of a building, being a building or part which was not originally constructed for occupation as a house, or which though so constructed has been appropriated to other purposes, becomes used as a house : or
 - (b) a building, or a part of a building, being a building or part which was originally constructed for occupation as a house by one family only, becomes occupied by two or more families ; or
 - (c) where byelaws contain special provisions with respect to buildings used for any particular purpose, a building or a part of a building, being a building or part not previously used for that purpose, becomes so used.

Section 68 of the Act of 1936^(u), provides that any building byelaws made by a local authority under that Act shall cease to have effect after a period of ten years, and all such byelaws made prior to the 1st of October, 1937, cease to have effect after the 31st July, 1939. The Minister of Health, may, however, by order, extend the period during which any byelaw is to remain in force.

Relaxation of Byelaws.

Where a local authority consider that the operation of any building byelaws in force in their district would be

unreasonable in relation to any particular case, they may obtain the approval of the Minister of Health to relax or dispense with the compliance therewith. Before giving his consent, the Minister must direct the manner in which notice of the proposed relaxation or dispensation must be given, and a period of not less than one month must elapse after the giving of such notice, before consent is given, and the Minister must take into consideration any objection received by him^(v).

Rejection of building plans.

Power is given by section 64 of the Act of 1936^(w), enabling a local authority to reject building plans which do not comply with the byelaws and in case of any dispute arising between the person submitting the plans and the authority, such person may apply to a court of summary jurisdiction to determine the matter, provided that the application must be made to the court prior to the commencement of the proposed works. This provision is of considerable importance, allowing for the settlement of any points of difference before the actual work begins. In addition to the above provision, the Minister of Health may, on the joint application of a person proposing to carry out works affected by building byelaws *and* the local authority, determine—

- (a) as to the application to that work of any building byelaws ; or
- (b) whether the plans of the work are in conformity with the byelaws ; or
- (c) whether the work has been executed in accordance with the plans as passed by the authority,

and the Minister's decision is final, but he may be directed by the High Court to state a case for their opinion on any question of law arising in the matter under review^(x).

If plans comply with the building byelaws they must be passed. They cannot be rejected on the ground that some other statute would be infringed, but the passing of the plans does not operate as a consent under any other enactment and a notice that plans have been passed must state so ^(y). In some areas building byelaws require a certificate of habitation to be issued by the local authority and although the Act of 1936 does not authorise the making of such a byelaw and they will all gradually disappear, there may still be some such byelaw in operation. The provisions of sections 64 and 67, *supra*, do

(v) Sect. 63, Public Health Act, 1936 ; 29 Halsbury's Statutes 374.

(w) 29 Halsbury's Statutes 375.

(x) *Ibid.*, sect. 67 ; 29 Halsbury's Statutes 379.

(y) *Ibid.*, sect. 64 : 29 Halsbury's Statutes 375.

not affect the right of a local authority to refuse to grant a habitation certificate(2).

If any work is carried out in contravention of the building byelaws, the local authority are empowered by section 65 of the Act of 1936, to require the owner to pull down or remove it, or to make such alterations as may be necessary to secure compliance with the byelaws. If a person fails to carry out the requirements of the local authority with regard to work which does not comply with the byelaws, the authority may themselves pull down or remove it, or carry out any necessary alterations. An authority cannot require any work to be pulled down, removed or altered after the expiration of twelve months from the date of its completion, or if notice of disapproval of the plans is not given to the person concerned within a period of one month from the date of submission of the plans (or five weeks, where the plans are received within three days of the monthly meeting of the local authority).

Failure of local authority to make or revoke byelaws.

If a local authority neglect to make building byelaws, or fail to revoke unreasonable byelaws, the Minister of Health may, in accordance with section 69 of the Act of 1936, make or revoke such byelaws.

Exemption of certain buildings from byelaws.

Section 71 of the Act of 1936, *infra*, details the buildings which are not subject to the byelaws relating to buildings referred to in sections 61 and 62 (see *ante*, pp. 9 and 10).

Section 71, Public Health Act, 1936.—Exemption of certain buildings from building byelaws.

Subject as hereinafter provided, nothing in the foregoing provisions of this Part of this Act with respect to building byelaws, or in any building byelaws made thereunder, shall apply in relation to—

- (a) any buildings, being school premises, erected or to be erected according to plans which are under any regulations relating to the payment of grants required to be, and have been, approved by the Board of Education; or
- (b) any buildings constructed by a county council or local authority in accordance with plans approved by the Minister of Agriculture and Fisheries under the Small Holdings and Allotments Acts, 1908 to 1931, or any Act amending those Acts, or any of them; or
- (c) any buildings belonging to any statutory undertakers and held or used by them for the purposes of their undertaking:

Provided that the exemption conferred by paragraph (c) of this section shall not extend to houses, or to buildings used as offices or showrooms, other than buildings so used which form part of a railway station.

Under the Camps Act, 1939(zz), buildings, etc., proposed to be erected in accordance with the provisions of that Act—which is designed to promote and facilitate the construction, maintenance and management of camps of a permanent character—are exempt from the provisions of the building byelaws, provided that a recognised company under the Act who submits any plans and specifications to the Minister of Health for his approval, must also send copies thereof to the local authority for the area in which the site of the proposed camp is situate, and the Minister must take into consideration any representations made to him by such local authority, before he gives his approval to the plans and specifications.

What is deemed to be the “erection of a new building.”

Subsection (2) of section 90 of the Act of 1936 prescribes the undermentioned operations which are deemed to be the erection of a building so as to be subject to the provisions of building byelaws.

Section 90. Public Health Act, 1936.—Interpretation of Part II.

- (2) For the purposes of this Part of this Act and, so far as byelaws made thereunder may provide, for the purposes of those byelaws, any of the following operations shall be deemed to be the erection of a building, that is to say—

- (i) the re-erection of any building or part of a building when an outer wall of that building or, as the case may be, that part of a building has been pulled down, or burnt down, to within ten feet of the surface of the ground adjoining the lowest storey of the building or of that part of the building;
- (ii) the re-erection of any frame building or part of a frame building when that building or part of a building has been so far pulled down, or burnt down, as to leave only the framework of the lowest storey of the building or of that part of the building;
- (iii) the roofing over of any open space between walls or buildings;

and the word “erect” shall be construed accordingly.

LOCAL ACTS.

The provisions of section 313 of the Act of 1936, *infra*, apply in the case of any sections of local Acts which were in force on the 1st of October, 1937, which were either inconsistent with the Act of 1936 or became redundant in consequence of the operation of that Act.

Section 313, Public Health Act, 1936.—Orders for amendment or adaptation of local Acts.

- (1) Where at the date of the passing of this Act there is in force—
- (a) in any county borough a local Act the Bill for which was promoted by the council of the borough; or

- (b) in any county or county district a local Act the Bill for which was promoted either by the county council or by the local authority of the district ;

and the said local Act contains provisions appearing to the Minister either to be inconsistent with any of the provisions of this Act, or to have become redundant in consequence of the passing of this Act, the Minister on the application, in the first mentioned case, of the council of the county borough, and, in the second mentioned case, of the county council or of the local authority, as the case may be, may by order make such alterations, whether by amendment or by repeal, in the local Act as appear to him to be necessary for the purpose of bringing its provisions into conformity with the provisions of this Act, or for the purpose of removing redundant provisions, as the case may be.

- (2) This section applies in relation to a local Act the Bill for which was promoted by any authority, board, commissioners, trustees or other body whose functions under the local Act have become exercisable by the council of a county borough, a county council or the local authority of a district, as if the Bill for that Act had been promoted by the council of the county borough, the county council or the local authority.
- (3) Any order made under this section shall be laid before each House of Parliament for a period of thirty days during the Session of Parliament, and, if before the expiration of that period either House resolves that the order be annulled, it shall be void, but without prejudice to the making of a new order :

Provided that, in reckoning any such period of thirty days as aforesaid, no account shall be taken of any time during which both Houses are adjourned for more than four days.

CHAPTER 2.

SANITARY AUTHORITIES.

In order to enforce the various Acts of Parliament relating to sanitary administration, the country is divided into districts as follows:—

- County Councils ;
 - County borough councils ;
 - Non-county borough councils ;
 - Urban district councils ;
 - Rural district councils ;
 - Port health authorities ; and
 - In London—
 - (i) Common council of the City of London ;
 - (ii) London county council ; and
 - (iii) Metropolitan borough councils.
- } known as county district councils ;(a)

Each of these local authorities possess powers under the Public Health and other Acts relating to public health and sanitation. So far as London is concerned, the bulk of the law is contained in the Public Health (London) Act, 1936, and the various London County Council (General Powers) Acts, detailed consideration of which is beyond the scope of the present volume.

LOCAL AUTHORITIES FOR PUBLIC HEALTH AND OTHER ACTS DEALING WITH SANITARY ADMINISTRATION.

(a) **Public Health Act, 1936.**—Section 1, *infra*, defines the local authorities for the purposes of the Act of 1936.

Section 1, Public Health Act, 1936.—Local Authorities for purposes of Act.

- (1) Subject to the provisions of this Act with respect to certain special authorities, districts and areas, it shall be the duty of the following authorities to carry this Act into execution, that is to say—
- (i) in a county borough, the council of the borough ;
 - (ii) in an administrative county, as respects certain matters, the county council and, as respects all other matters, the councils of county districts, without prejudice, however, to the exercise by a parish council of any powers conferred upon such councils.

- (2) In this Act the following expressions have the meanings hereby assigned to them :—

“local authority” means the council of a borough, urban district or rural district ;

“urban authority” means the council of a borough or urban district ;

“rural authority” means the council of a rural district ;

“district,” in relation to the local authority of a borough, means the borough ; and

“parish,” in relation to a common parish council acting for two or more grouped parishes, means those parishes :

Provided that, in relation to a rural district with respect to which there is in force such a direction as is mentioned in subsection (2) of section forty-two of the Local Government Act, 1933, any reference in this Act to a local authority, to a rural authority, or to a rural district council shall be construed as a reference to the council by whom the affairs of the district are being temporarily administered.

The Minister of Health is empowered to constitute a port health authority or a joint board for the enforcement of such provisions as may be specified and sections 2 to 10 of the Act of 1936 (see *post*, p. 31 *et seq*) contain the powers, etc., of such authority or board.

(b) **Factories Act, 1937.**—The councils of county boroughs, boroughs, urban and rural districts—termed collectively “district councils”—are concerned with the enforcement of certain of the provisions of the Factories Act, 1937, relating to factories (see chapter 14, *post*, p. 312 *et seq*).

(c) **Shops Act, 1934.**—The provisions of the Shops Act, 1934, relating to the health and comfort of shop workers, are enforced partly by local sanitary authorities (councils of county boroughs, boroughs, urban and rural districts) and partly by Shops Acts authorities (county boroughs, boroughs, urban districts with populations not less than 20,000, and county councils) (see chapter 15, *post*, p. 356 *et seq*).

(d) **Rag Flock Act, 1911.**—This Act is administered by sanitary authorities (councils of county boroughs, boroughs, urban and rural districts) (see chapter 14, *post*, p. 352).

(e) **Rivers Pollution Prevention Acts, 1876 and 1893.**—The Acts of 1876 and 1893 relating to the pollution of rivers, are administered by sanitary authorities (as defined above) but every county council has power to enforce the Acts in respect of any portion of a river or stream which is situated within or passes through the area of the county and in such circumstances the county council have all the powers of a sanitary authority (see chapter 12, *post*, p. 282).

(f) **Housing Act, 1936.**—The councils of county boroughs, boroughs, urban and rural districts, are the local authorities for the purposes of the Housing Act, 1936, relating to lodging houses (see chapter 18, *post*, p. 403 *et seq*).

The whole of the work of local authorities in connection with public health and sanitary administration is carried out under the general supervision of the Ministry of Health. The functions of the Ministry and the various local authorities are dealt with in the present chapter.

MINISTRY OF HEALTH.

The Ministry of Health was constituted in 1919 by the Ministry of Health Act of that year^(b), superceding the old Local Government Board which was formed in 1871. The general powers and duties of the Ministry are defined in section 2 of the Act of 1919 as follows:—

- (1) To take all such steps as may be desirable to secure the preparation, effective carrying out and co-ordination of measures conducive to the health of the people, including measures for the prevention and cure of diseases;
- (2) The avoidance of fraud in connection with alleged remedies therefor;
- (3) Treatment of physical and mental defects;
- (4) Treatment and care of the blind;
- (5) Initiation and direction of research;
- (6) Collection, preparation, publication and dissemination of information and statistics relating thereto; and
- (7) Training of persons for health services.

The Ministry of Health is constituted on similar lines to other Government Departments, having a Minister at the head, together with a Parliamentary Secretary. The work of the Ministry is organised in divisions as follows:—

- i—Local government administration;
- ii—Housing;
- iii—Health services, foods, infectious disease prevention;
- iv—The blind;
- v—General health questions and general practitioner services;
- vi—Establishment; and
- vii—Intelligence and public relations.

Each division is divided into departments dealing with separate subjects. The staff of the Ministry consists of administrative and clerical officers, together with a large number of professional officers, including legal, medical, engineering, and architectural. In addition, there are general

inspectors in close touch with local authorities, district auditors, and inspectors of alkali works.

The more important duties of the Ministry in relation to sanitary authorities are discussed in the following paragraphs.

(i) **Confirmation of byelaws.**—The Minister is the confirming authority in respect of all byelaws made under the Act of 1936, full details of the subjects in regard to which byelaws may be made are given in chapter 1 (see *ante*, p. 6).

(ii) **Public local inquiries.**—Section 318 of the Act of 1936 (c) authorises the Minister to hold a local inquiry in any case where he is required by the Act to determine any difference, to make any order, to frame any scheme, to give any consent, confirmation, sanction or approval, or otherwise to act under the Act, and in any other case where he deems it advisable that a local inquiry should be held in relation to any matter concerning the public health in any place.

The general procedure governing public local inquiries is detailed in section 290 of the Local Government Act, 1933(d). This section enables the inspector holding the inquiry to require the attendance of any person to give evidence or to produce any documents relating to the matter of the inquiry. If deemed desirable, evidence may be taken on oath. If any person refuses or wilfully neglects to attend an inquiry, he is liable on summary conviction to a fine not exceeding fifty pounds. The expenses incurred in holding an inquiry must be paid by the local authority or party to the inquiry, as the Minister directs.

(iii) **Action in case of default by local authority.**—The Minister has extensive powers for dealing with local authorities who neglect to carry out their duties under the Public Health Act.

Section 321 of the Act of 1936(e) empowers a county council to complain to the Minister that the council of any county district have failed to carry out their duties under the Act, and thereupon the Minister must hold a local inquiry. Section 322(1) enables the Minister to hold such an inquiry if—

- (a) a complaint is made to him that any council, port health authority, or joint board have failed to discharge their functions under the Act in any case where they ought to have done so; or
- (b) he is of opinion that an investigation should be made as to whether any council, port health authority or joint board have failed as aforesaid.

(c) 29 Halsbury's Statutes 523.

(d) 26 Halsbury's Statutes 459.

(e) 29 Halsbury's Statutes 524.

If, after a public inquiry held in accordance with sections 321 or 322(1), *supra*, the Minister is satisfied that a local authority are in default, he may, by order, require such authority to discharge their functions so as to remove the default, within such time and in such manner, as may be specified in the order(f). If the local authority fail to comply with an order of the Minister, he may, in the case of a county district or a joint board whose district lies wholly within one county, or a port health authority whose district lies wholly in one county, make an order transferring to the county council, such of the powers of the local authority as may be specified in the order. In the case of county councils or county boroughs, the Minister may transfer the functions of the defaulting authority to himself(g).

Where the Minister has transferred any of the functions of a local authority to himself, section 324 of the Act of 1936(h) provides that any expenses incurred by him in the execution of such functions may be recovered from the authority in default.

Section 325 of the Act of 1936(i) empowers the Minister to vary or revoke any order made by him transferring the functions of a defaulting local authority, either to the county council or to himself.

(iv) **Appeals to the Minister of Health.**—The Act of 1936 provides for appeals to be made to the Minister in cases where action is to be taken by a local authority or where disputes arise regarding the requirements of an authority. The following summary shows the sections enabling an appeal to be made to the Minister.

TABLE II
Appeals to Minister of Health.

Section	Subject matter.	Reference to text
15	Provision of public sewers and sewage disposal works	92
16	Notices to be given before constructing public sewers, or sewage disposal works outside district	
17	Adoption by local authority of sewers and sewage disposal works	97
19	Power of local authority to require proposed sewer or drain to be constructed as to form part of general system	99
		101

(f) Sect. 322 (2), Public Health Act, 1936 ; 29 Halsbury's Statutes 525.

(g) *Ibid*, sect. 322 (3) ; 29 Halsbury's Statutes 525.

(h) 29 Halsbury's Statutes 526.

(i) *Ibid*, 527.

TABLE II.—*continued.*

Section.	Subject matter.	Reference to text.
21	Agreements with county council for use of highway drains and sewers for sanitary purposes, or to allow public sewers to be used for drainage of highways	110
67	Power to refer questions arising under building byelaws to the Minister	11
77	Sweeping and watering of streets	202
113	Power of local authority in certain circumstances to supply water to premises outside their district	157
116	General power of local authority for supplying district with water	158
118	Notices to be given before constructing reservoir	159
126	General powers of local authority to make charges for water	168
127	Power to charge by meter for supply to certain premises and for certain purposes	168
139	Appeal by owner against requirement to provide water supply	173
192	Power of registration authority to exempt certain institutions	—
194	Delegation of powers as to nursing homes by county council to council of county district	—
279	General provisions as to breaking open streets	95

Any person who is aggrieved by a direction of a local authority given under the Public Health (Drainage of Trade Premises) Act, 1937(*k*), or by the refusal of a local authority to give a consent under that Act, may appeal to the Minister of Health, whose decision in the matter is final(*l*).

(v) **Summary of powers of Minister of Health under the Act of 1936.**—Table III summarises the powers of the Minister of Health under the Act of 1936 and indicates the reference to the pages where the various sanitary provisions are discussed.

TABLE III
Powers of Minister of Health Under Public Health Act, 1936.

Section	Subject matter	Reference to text
2	Constitution of port health district under port health authority	31
4	Restriction on discharge of functions by local authorities within port health district	31

(*k*) Sect. 3; 30 Halsbury's Statutes 698.(*l*) See *post*, p. 118.

TABLE III—*continued.*

Section.	Subject matter.	Reference to text.
6	Union of districts, or parts of districts, for certain purposes under joint Board	31
7	Restriction on discharge of functions by local authorities within united district	—
8	Joint boards representing councils of counties and county boroughs	32
9	General provisions as to orders constituting port health districts, united districts, and joint boards	32
12	Constitution and dissolution of special purpose areas in rural districts	30
13	Power of Minister to invest particular rural authority with urban powers	29
18	Power of local authority to agree to adopt sewer or drain, or sewage disposal works, at future date	103
28	Communication of sewers with sewers of another sewerage authority	99
63	Power of local authority with consent of Minister to relax requirements of byelaws	11
68	Temporary operation of building byelaws	10
69	Power of Minister to make building byelaws in case of default, and to revoke unreasonable byelaws	12
70	Certain information, and copies of certain local enactments, to be appended to printed copies of building byelaws	—
72	Removal of house refuse, cleansing of ashpits, etc.	184
92(2)	Statutory nuisances	219
104	Byelaws as to smoke	274
105	Power of local authority to investigate problems relating to atmospheric pollution	281
107	Restriction on establishment of offensive trade in urban district	255
108	Byelaws as to certain trades in urban districts	258
109	Saving for mines, smelting works, etc.	277
113	Power of local authority in certain circumstances to supply water to premises outside their district	157
114	Power of local authority to supply water in bulk to adjoining authority	157
116	General powers of local authority for supplying district with water	158
127	Power to charge by meter for supply to certain premises and for certain purposes	168
132	Byelaws for preventing waste, misuse or contamination of water, etc.	169
143	Power of Minister to make regulations with a view to the treatment of certain diseases, and for preventing the spread of such diseases	417
147	Power of local authority to declare further diseases to be notifiable	419
153	Power to prohibit home work on premises where notifiable disease exists	341

TABLE III—*continued.*

Section.	Subject matter.	Reference to text.
161	Power of Minister to make regulations as to disposal of dead bodies	309
171	Institutional treatment for tuberculosis	470
176	Power of county councils and local authorities in respect of the prevention and treatment of blindness	—
177	Power of local authority to provide temporary supply of medicine and medical assistance, and to provide nursing attendance in certain cases	450
179	Instruction, lectures, etc., on questions relating to health or disease	477
180	Qualifications for certain appointments in connection with tuberculosis and venereal disease	35
185	County schemes for provision of hospital accommodation for infectious disease	—
193	Power of Minister to exempt Christian Science nursing homes	—
194	Delegation of powers as to nursing homes by county council to council of county district	—
200	Welfare authorities	—
204	Powers of welfare authority with respect to maternity and child welfare	—
251	Regulations as to canal boats	374
269	Power of local authority to control use of moveable dwellings	397
283	Notices to be in writing ; forms of notices	59
291	Certain expenses recoverable from owners to be a charge on the premises : power to order payment by instalments	74
295	Power of local authority to grant charging orders	75
303	Mode of reference to arbitration	68
306	Compulsory purchase of land by means of provisional order	—
312	Confirmation of byelaws	5
313	Orders for amendment or adaptation of local Acts	—
314	Power to apply corresponding provisions of Act to joint boards, etc., in substitution for repealed provisions	—
315	Existing isolation hospital committees to be dissolved	—
316	Adaptation, where necessary, of provisional order procedure	—
318	Local inquiries	—
321	Complaint by county council to Minister of default of council of county district	18
322	Power of Minister to enforce exercise of powers by local authorities, etc., in default	19
324	Provisions as to exercise by Minister of functions of body in default	19
325	Power to vary and revoke orders relating to defaults	19
326	Provisions as to the transfer and compensation of officers and superannuation rights of transferred officers	—

TABLE III—*continued.*

Section.	Subject matter.	Reference to text.
327	Provisions for compensation in certain cases to officers of trustees, etc., executing local Acts	—
336	Saving for powers and duties of Middlesex County Council as sewerage and sewage disposal authority	79
341	Power to apply provisions of Act to Crown property	76

Welsh Board of Health.—The Welsh Board of Health, constituted in accordance with the Ministry of Health Act, 1919(*m*), acts under the direction of the Minister of Health as the central authority in Wales and Monmouthshire(*n*), for the administration of national health and pensions insurance and of the health functions delegated to it from time to time by the Minister.

The functions of the Board were transferred from the Ministry of Health from time to time and are detailed in various circulars(*o*). The Board consists of members selected and appointed by the Minister of Health and its office is at Cathays Park, Cardiff. Local authorities in Wales and Monmouthshire communicate directly with the Board in all matters relating to the services which fall within its administration, except the making and confirmation of byelaws, correspondence on which should be sent to Whitehall.

COUNTY COUNCILS.

County councils are mainly concerned in seeing that the councils of county districts carry out their duties under the Public Health Acts, in a proper and satisfactory manner.

The procedure with regard to the meetings and proceedings of county councils is contained in Part I of the Third Schedule to the Local Government Act, 1933(*p*).

(i) **Transfer of powers of county district council.**—Section 320 of the Act of 1936(*q*) enables a county district council, by

(*m*) Sect. 5; 3 Halsbury's Statutes 419.

(*n*) *Ibid.*, sect. 11 (3); *ibid.*, 421.

(*o*) Ministry of Health Circular 136, 30th September, 1920.

Ministry of Health Circular 1193, 20th April, 1931.

Ministry of Health Circular 1449, 17th December, 1934.

Ministry of Health Circular 2005, 1st May, 1940.

agreement with the county council, to relinquish in favour of, and transfer to, the county council, any of their functions under that Act, for such period and subject to such conditions as may be agreed between the two councils. A copy of any such agreement, and notice of its determination, must be sent forthwith to the Minister of Health.

(ii) Action in case of default by county district council.—

A county council may complain to the Minister of Health in accordance with section 321 of the Act of 1936 (see *ante*, p. 18), in any case where a county district council fail to carry out their functions under that Act. The Minister is empowered by section 322 (see *ante*, p. 18) to make an order transferring the powers and duties of a defaulting county district council, joint board, or port health authority, to the county council. Where an order has been made under section 322, *supra*, the provisions of section 323, *infra*, apply.

Section 323, Public Health Act, 1936.—Subsidiary provisions on transfer of functions of body in default to county council.

Where any functions of the council of a county district, a port health authority or a joint board are transferred by an order under the last preceding section to a county council—

- (a) the expenses incurred by the county council in discharging those functions shall, except in so far as they may be met by any grant made by the county council, be a debt due from the body in default to the county council, and shall be defrayed as part of the expenses of the body in default in the execution of this Act, and that body shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them ;
- (b) any such expenses as aforesaid shall, where the body in default are the council of a rural district, be raised as general expenses, or as special expenses, or partly as general expenses and partly as special expenses, according as the council may direct ;
- (c) the county council, for the purpose of functions transferred to them, may on behalf of the body in default borrow money subject to the like conditions, in the like manner, and on the security of the like revenues as that body might have borrowed for the purpose of those functions ;
- (d) the county council may charge the said revenues with the payment of the principal and interest of the loan, and the loan, with the interest thereon, shall be paid by the body in default in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on those revenues by that body ; and
- (e) the county council shall keep separate accounts of all receipts and expenditure in respect of the transferred functions.

(iii) **Delegation of functions of county council to county district council.**—A county council may, in accordance with section 274 of the Local Government Act, 1933(*r*), delegate to a county district council, with or without restrictions or conditions as they think fit, any of their functions, except—

- (a) functions for the discharge of which the council are required by any enactment for the time being in force to appoint a committee;
- (b) functions in respect of which specific powers of delegation to the councils of county districts are conferred by any such enactment; and
- (c) the power of borrowing money or issuing a precept for the levy of a rate.

Where a county council delegate their powers in accordance with section 274, *supra*, the county district council act as agents for the county council.

(iv) **Execution of work by county council outside their area.**—Section 274 of the Act of 1936(*s*), authorises a county council to execute outside their county or district any work which they may carry out within their county or district in accordance with any of the provisions of that Act.

(v) **Powers of county council under the Public Health Act, 1936.**—Subsection (1) of section 1 of the Act of 1936 (see *ante*, p. 15), constitutes a county council as the authority for carrying out certain matters under that Act in relation to their administrative county. The following Table indicates the powers in such Act which may (or must) be enforced by county councils:—

TABLE IV

Public Health Acts, 1936.—Powers enforceable by county councils.

Section	Subject matter.	Reference to text.
6	Union of districts, or parts of districts, for certain purposes under joint board	31
8	Joint boards representing councils of counties and county borough councils	32
21	Agreements with county council for use of highway drains and sewers for sanitary purposes, or to allow public sewers to be used for drainage of highways	110
85	Cleansing of verminous persons and their clothing	487
86	Provision of cleansing stations	485
87	Provision of public sanitary conveniences	152
155(5)	Provision as to disinfection of library books	442
171	Institutional treatment of tuberculosis	470
172	Removal to hospital of infectious persons suffering from tuberculosis of respiratory tract	448

TABLE IV—continued.

Section.	Subject matter.	Reference to text.
173	General provisions as to treatment of tuberculosis and after-care	470
174	Expenses of county councils in connection with tuberculosis	—
175	Special provisions with respect to treatment of tuberculous seamen	471
176	Power of county councils and local authorities in respect of the prevention and treatment of blindness	—
178	Power of county councils and local authorities to subscribe to nursing associations	—
179	Instruction, lectures, etc., on questions relating to health or disease	477
181	Provision of hospital accommodation by county councils and local authorities	—
182	Consultation with voluntary hospitals as to accommodation to be provided	—
183	Power to provide houses for officers of a hospital	—
184	Recovery of expenses of maintenance in certain institutions	450
185	County schemes for provision of hospital accommodation for infectious disease	—
186	Expenses of county councils in making provision for the treatment of infectious disease	—
187	Registration of nursing homes	—
188	Cancellation of registration	—
189	Procedure and right of appeal, where registration refused or cancelled	—
190	Byelaws as to nursing homes	—
191	Inspection of nursing homes	—
192	Power of registration authority to exempt certain institutions	—
194	Delegation of powers as to nursing homes by county council to county district council	—
196	Provision of laboratories	476
197	Provision of ambulances	476
200	Welfare authorities	—
201	Maternity and child welfare committee of welfare authority	—
202	Expenses of county council as welfare authority	—
203	Provision for early notification of births	—
204	Powers of welfare authority with respect to maternity and child welfare	—
206	Notices to be given by persons receiving children for reward	—
207	Notices to be given if residence is changed, or if foster child dies, or is removed	—
208	Penalties for failure to give notices	—
209	Appointment and powers of child protection visitors	—
210	Persons prohibited from receiving foster children	—
211	Power of welfare authority to prevent overcrowding where foster children kept	—
212	Removal of foster children kept in unsuitable premises, or by unsuitable persons	—

TABLE IV—*continued.*

Section.	Subject matter.	Reference to text.
218	Welfare authority may maintain child in place of safety	—
219	Exemptions from this Part of Act	—
267(2)	Application to ships and boats of certain provisions of Act	83
273	Provisions as to sub-committees	33
274	Power of councils to execute works outside their county or district	25
307	Contributions by county councils to certain expenses of county district councils	—
315	Existing isolation hospital committees to be dissolved	—
320	Relinquishment of functions by district councils	23
321	Complaint by county council to Minister of default of council of county district	18
322	Power of Minister to enforce exercise of powers by local authorities, etc., in default	18
323	Subsidiary provisions on transfer of functions of body in default to county council	24

COUNTY BOROUGH COUNCILS.

The functions of a county borough council are similar to those of a non-county borough, but every county borough forms a separate administrative area^(t), not subject to the supervision of a county council, and it was held^(u) that a county borough was an urban district within the meaning of section 62 of the Local Government Act, 1894^(x).

The powers of the Minister of Health in relation to defaulting county borough councils are detailed previously (see *ante*, p. 18).

The procedure with regard to the meetings and proceedings of county borough councils is contained in Part II of the Third Schedule to the Local Government Act, 1933^(y).

BOROUGH AND URBAN DISTRICT COUNCILS.

Borough and urban district councils generally have all the powers of a local authority under the Act of 1936 (see *ante*, p. 15). The following matters however are dealt with only by county councils and county borough councils.

(t) Sect. 1 (3), Local Government Act, 1933; 26 Halsbury's Statutes 306.

(u) *Kirkdale Burial Board v. Liverpool Corpn.*, [1904] 1 Ch. 829; 33 Digest 55, 337.

(x) 10 Halsbury's Statutes 816.

TABLE V

Public Health Act, 1936.—Powers confined to county councils and county borough councils.

Section.	Subject matter.	Reference to text.
8	Joint boards representing councils of counties and county boroughs	32
171	Institutional treatment of tuberculosis	470
173(2)	General provisions as to treatment of tuberculosis and after-care	470
175	Special provisions with respect to treatment of tuberculous seamen	471
187	Registration of nursing homes	—
188	Cancellation of registration	—
189	Procedure, and right of appeal, where registration refused or cancelled	—
190	Byelaws as to nursing homes	—
191	Inspection of nursing homes	—
192	Power of registration authority to exempt certain institutions	—
200	Welfare authorities	—

The procedure with regard to the meetings and proceedings of borough councils is contained in Part II of the Third Schedule to the Local Government Act, 1933(*z*), and of urban district councils in Part III of the same Schedule(*a*).

Section 11 of the Act of 1936(*b*) enables an urban district (*i.e.* borough or urban district, see *ante*, p. 16) to divide their district for all or any of the purposes of that Act.

The powers of the Minister of Health in relation to defaulting non-county boroughs and urban districts are detailed previously (see *ante*, p. 18).

RURAL DISTRICT COUNCILS.

It has been customary in previous Public Health Acts to exclude rural districts from the operation of certain of the provisions of the Acts, on the principle that the more thickly populated urban areas require a standard in matters of sanitation and public health which it would be unreasonable to impose upon rural districts. Whilst this assumption is still true in certain respects, it is of less importance than hitherto. Hence, the Act of 1936 makes of general application, many powers previously confined to urban districts (except where

rural councils were invested with urban powers). There are still, however, a number of provisions in the Act of 1936 which do not apply to rural districts, unless the Minister of Health invests a particular rural authority with urban powers, in accordance with section 13, *infra*.

Section 13, Public Health Act, 1936.—Power of Minister to invest particular rural authority with urban powers.

- (1) The Minister, on an application made to him in accordance with the provisions of this section, may by order—
 - (a) declare any provisions of this Act which are in force in boroughs and urban districts to be in force in any particular rural district, or in any particular contributory place in a rural district; and
 - (b) invest the council of the rural district, as respects the district or, as the case may be, as respects that particular contributory place, with all or any of the functions of an urban authority under this Act, either unconditionally or subject to such conditions as may be specified in the order as to the time, area or manner during, at or in which those functions are to be discharged.
- (2) An application for the purposes of this section may be made by—
 - (a) the council of the rural district;
 - (b) the council of the county in which the district is situate;
 - (c) the parish council of any parish situate in the district; or
 - (d) any number of local government electors for the district or for any contributory place therein, not being less than one hundred or one-third of the total number of those electors, whichever is the less:

Provided that, where the application is made by the council of a parish or by local government electors for a contributory place, the order of the Minister shall not confer upon the rural district council any new power, except in relation to, or to a part of, that parish or, as the case may be, that contributory place.

The provisions referred to above, which are, in the absence of action by the Minister under section 13, *supra*, confined to urban districts, are shown in Table VI, *infra*.

TABLE VI

Public Health Act, 1936.—Powers not enforceable by rural councils.

Section.	Subject matter.	Reference to text.
11	Power of urban authority to divide district	28
41	In urban district notice to be given of intention to repair, etc., underground drains	132

TABLE VI—*continued.*

Section.	Subject matter.	Reference to text.
46	Sanitary conveniences in workplaces	331
79	Power to require removal of noxious matter by occupier of premises in urban district	192
80	Periodical removal of manure, etc., from stables, etc., in urban district	225
107	Restriction on establishment of offensive trade in urban district	255
108	Byelaws as to certain trades in urban districts	258
263	Watercourses in urban district not to be culverted except in accordance with approved plans	299
264	Urban authority may require repair and cleansing of culverts	300

The procedure with regard to the meetings and proceedings of rural district councils is contained in Part II of the Third Schedule to the Local Government Act, 1933(*c*); of parish councils in Part IV thereof(*d*); and of parish meetings in Part VI thereof(*e*).

The powers of the Minister of Health in relation to defaulting rural district councils are detailed previously (see *ante*, p. 18).

Section 12 of the Act of 1936(*f*) enables a rural authority, with the approval of the Minister of Health, to constitute any part of their district a "special purpose area" for the purpose of charging thereon exclusively the expenses of works of sewerage, sewage disposal or water supply, or of any other works the expenses of which are declared by or under any enactment (including the Public Health Act, 1936) to be special expenses. Special drainage districts constituted under section 277 of the Public Health Act, 1875(*g*), are now known as special purpose areas.

PORT HEALTH AUTHORITIES.

Port sanitary districts and port sanitary authorities existing at the 1st of October, 1937, became known as "port health districts" and "port health authorities" respectively(*h*).

(*c*) 26 Halsbury's Statutes 497.

(*d*) 26 Halsbury's Statutes 499.

(*e*) 26 Halsbury's Statutes 501.

(*f*) 29 Halsbury's Statutes 330.

(*g*) 13 Halsbury's Statutes 741.

(*h*) Sect. 5, Public Health Act, 1936; 29 Halsbury's Statutes 325.

Section 2 of the Act of 1936 defines the expression "port" as meaning a port established for the purposes of the enactments relating to the Customs, and the expression "riparian authority" as meaning—

- (a) any local authority whose district, or any part of whose district, forms part of, or abuts on, that port or part of a port; and
- (b) any conservators, commissioners or other persons having authority in, over or within that port or part of a port.

The Minister of Health is empowered by section 2, *supra*, to constitute a port health district, comprising either one riparian authority or a joint board consisting of representatives of two or more such authorities.

An order constituting a port health district gives the port health authority jurisdiction over the waters within the area covered by that authority and also over such parts of the district of the riparian authority as may be specified in the order. The port health authority may have assigned to them any functions, rights and liabilities of a local authority under any enactment contained in the Act of 1936 or any unrepealed enactment contained in the Public Health Acts, 1875 to 1932(*i*).

Section 4 of the Act of 1936(*h*) prohibits a local authority discharging any functions within the area of a port health district which are functions of the port health authority but the Minister of Health may approve of the delegation of powers from the port health authority to the riparian authority, in which case the latter authority act as agents of the former.

The general provisions with regard to port health authorities are contained in sections 9 and 10 of the Act of 1936 (see *post*, p. 32).

COMBINATION OF LOCAL AUTHORITIES, ETC.

(a) **Combination of local authorities.**—Section 272 of the Act of 1936(*l*) enables two or more local authorities, by agreement, to combine for the purposes of any of their functions under that Act.

(b) **Joint boards.**—The Minister of Health is empowered by section 6 of the Act of 1936(*m*), to constitute a united district, comprising the districts or parts of districts of two or more local authorities, for any of the purposes of the Act of 1936 or for any of the unrepealed provisions of the Public Health Acts, 1875 to 1932. Where such a united district is formed, it is governed by a joint board, composed of representatives

(*i*) *Ibid*, sect. 3; 29 Halsbury's Statutes 324.

(*h*) 29 Halsbury's Statutes 325.

(*l*) 29 Halsbury's Statutes 498.

(*m*) 29 Halsbury's Statutes 326

of the constituent local authorities. If the county council undertake to contribute towards the expenses of the joint board, they are entitled to representation thereon.

Upon the constitution of a joint board, the local authorities within its area, will cease to discharge the functions assumed by the board, provided that the Minister of Health may authorise an authority to act concurrently with the joint board, or the board may by agreement delegate any of their functions to the local authority of any constituent district but in such circumstances the authority will act as agents of the board⁽ⁿ⁾.

(c) **Co-operation between county and county borough councils.**—Section 8 of the Act of 1936^(o) empowers the Minister of Health to make an order enabling two or more county and county borough councils, by agreement, to form a joint board for the discharge of any of their functions.

Section 9 of the Act of 1936^(p) contains the general provisions with regard to united districts and joint boards, and enables the Minister of Health to include in any order constituting such district or board, provisions with regard to the settlement of differences between the constituent authorities, transfer of property and liabilities, adjustment of accounts, payment of monies due, and raising of moneys. Section 10 gives to a joint board similar borrowing powers to those possessed by local authorities under the Act of 1936.

APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES.

Section 85 of the Local Government Act, 1933, *infra*, enables a local authority to appoint a committee for the purpose of dealing with any of the functions of the authority, except the power of levying, or issuing a precept for, a rate, or of borrowing money. It should be noted that such a committee may include persons who are not members of the local authority, so long as not less than two-thirds of the members of the committee are members of that authority.

Having appointed a committee under this section, the local authority may delegate to it any of its functions, except those matters referred to above, and where powers have been so delegated, action may be taken on the instructions of the committee without waiting for their decisions to be confirmed by the local authority.

Section 85, Local Government Act, 1933.—Appointment of committees.

(1) A local authority may appoint a committee for any such general or special purpose as in the opinion of the local authority would

(n) *Ibid.*, sect. 7; 29 Halsbury's Statutes 327.

(o) 29 Halsbury's Statutes 327.

(p) 29 Halsbury's Statutes 328.

- be better regulated and managed by means of a committee, and may delegate to a committee so appointed, with or without restrictions or conditions, as they think fit, any functions exercisable by the local authority either with respect to the whole or a part of the area of the local authority, except the power of levying, or issuing a precept for, a rate, or of borrowing money.
- (2) The number of members of a committee appointed under this section, their term of office, and the area, if any, within which the committee is to exercise its authority, shall be fixed by the local authority.
 - (3) A committee appointed under this section (other than a committee for regulating and controlling the finance of the local authority or of their area) may include persons who are not members of the local authority :

Provided that at least two-thirds of the members of every committee shall be members of the local authority.

- (4) Every member of a committee appointed under this section who at the time of his appointment was a member of the local authority by whom he was appointed shall, upon ceasing to be a member of the authority, also cease to be a member of the committee :
- Provided that for the purposes of this section a member of a local authority shall not be deemed to have ceased by reason of retirement to be a member of the authority, if he has been re-elected a member thereof not later than the day of his retirement.
- (5) Nothing in this section shall authorise the appointment of a committee for any purpose for which the local authority are authorised or required to appoint a committee by any other enactment (including any enactment in this Act) for the time being in force.

Where a committee has been appointed, either by a county council or a local authority, for any of the purposes of the Act of 1936, section 273, *infra*, enables the committee to appoint a sub-committee, to which any of the functions of the committee may be delegated.

Section 273, Public Health Act, 1936.—Provisions as to sub-committees.

A committee appointed by a county council or local authority for any of the purposes of this Act may, subject to any directions of the council or authority, appoint such and so many sub-committees consisting either wholly or partly of members of the committee as the committee think fit and, subject, as aforesaid, may delegate, with or without restrictions or conditions, any of their functions to a sub-committee so appointed :

Provided that a majority of the members of any such sub-committee shall be members of the county council or, as the case may be, of the local authority.

CHAPTER 3.

SANITARY OFFICERS.

In order that local authorities may carry out their duties under the Public Health and other Acts dealing with sanitary administration, they are required to appoint a suitable and sufficient number of officers for the purpose.

The officers mainly concerned with sanitary administration are the sanitary inspector and medical officer of health. In some areas, the surveyor may be concerned with certain sections of the work, such as public cleansing and water supply.

DUTY OF LOCAL AUTHORITY TO APPOINT SANITARY OFFICERS.

The council of every borough(*a*) and the council of every urban and rural district(*b*) *must* appoint fit persons to be medical officer of health and sanitary inspector or inspectors. Every county council *must* appoint a medical officer of health(*c*) ; they need not appoint a sanitary inspector although an increasing number do so. A rural district council may appoint more than one medical officer of health(*d*).

Where a vacancy occurs in the office of medical officer or sanitary inspector, it must be filled within a period not exceeding six months, or such longer period as the Minister of Health may, in any particular case, permit(*e*).

The Minister of Health is empowered by section 108 of the Local Government Act, 1933(*f*), to make regulations prescribing—

- (a) the qualifications to be held and the duties to be performed by medical officers of health of boroughs and urban and rural districts ; and
- (b) the mode of appointment and terms as to salary and tenure of office of medical officers of health and sanitary inspectors of boroughs and urban and rural districts, and the qualifications and duties of sanitary inspectors.

In accordance with the above powers, the Minister has made the Sanitary Officers (Outside London) Regulations, 1935(*g*), dealing with the matters detailed in section 108, *supra*.

(a) Sect. 106, Local Government Act, 1933 ; 26 Halsbury's Statutes 361.

(b) *Ibid*, sect. 107 ; 26 Halsbury's Statutes 362.

(c) *Ibid*, sect. 103 ; 26 Halsbury's Statutes 360.

(d) *Ibid*, sect. 107(1) ; 26 Halsbury's Statutes 362.

(e) *Ibid*, sect. 106(4) ; 26 Halsbury's Statutes 362.

(f) 26 Halsbury's Statutes 363.

(g) S.R. and O., 1935, No. 1110.

Subsection (3) of section 3 of the Act of 1936, applies the provisions of section 108, *supra*, to the medical officer of health and sanitary inspector of a port health authority (see *ante*, p. 30), subject to the modifications contained in the First Schedule to the Act of 1936.

MEDICAL OFFICERS OF HEALTH.

Qualifications.—Subsection (3) of section 108, *supra*, provides that no person may be appointed as a medical officer of health, unless, in addition to holding any qualification which may be prescribed by regulations—

- (a) he is a duly qualified medical practitioner; and
- (b) in the case of a borough or urban or rural district having a population of fifty thousand or more, he is also registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine.

Article 8 of the Sanitary Officers (Outside London) Regulations, 1935, prescribes that no person may be appointed as a medical officer of health to any district after the 1st of January, 1936, unless, in addition to the qualifications prescribed by any statute, he is also registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine. From the above date therefore, no person may be appointed as a medical officer of health, unless he possesses one of the qualifications referred to in article 8, *supra*.

Compliance with the above regulation is obligatory on the council of every borough and of every urban and rural district(*h*).

The Minister of Health is empowered by section 180 of the Act of 1936(*i*), to prescribe by regulations the qualifications of medical officers of health appointed in connection with the treatment of tuberculosis or venereal diseases, and medical officers may not be appointed for such work unless they possess the appropriate qualifications.

Appointment.—The appointment of a medical officer of health is subject to the approval of the Minister of Health in every case where a payment is made by the county council towards the salary of such officer, paid in accordance with section 109 of the Local Government Act, 1933, *infra*.

Section 109, Local Government Act, 1933.—Payments by county council towards salary of medical officers of health and sanitary inspectors of county districts.

Where in the case of a medical officer of health or sanitary inspector of a county district the regulations made under subsection (1)

(*h*) Sect. 108(2), Local Government Act, 1933; 26 Halsbury's Statutes 363.

(*i*) 29 Halsbury's Statutes 447.

of the last preceding section are complied with, the council of the county in which the district, or any part thereof, is situate shall, during the tenure of office of that officer, pay to the council by whom he is paid a sum equal to one-half of his salary :

Provided that—

(i) if the Minister certifies to the county council—

- (a) that the medical officer of health has failed to send to the Minister such reports and returns as are for the time being required by the regulations made under the last preceding section to be so sent ; or
- (b) that the medical officer of health has not given to the county medical officer of health such information as he is required to give under section one hundred and thirteen of this Act ; or
- (c) that the provisions of the next succeeding section of this Act relating to a medical officer of health or sanitary inspector have not been complied with ;

the said sum equal to one-half of the salary of the medical officer of health or, if the non-compliance relates to the sanitary inspector, of the sanitary inspector, shall be forfeited to the Crown and shall be paid to the Exchequer and not to the council by whom the officer is paid ; and

(ii) where a county district is not wholly situate in one county, such proportionate part only of the sum otherwise payable as may be certified by the Minister shall be paid by the council of each county in which a part of the district is situate.

In every case not subject to the above provisions, the appointment of medical officer of health is not subject to the approval of the Minister of Health, but it should be noted that the local authority must comply with the requirements of Article 8 of the Sanitary Officers (Outside London) Regulations, 1935, *supra*, regarding the qualifications of medical officers, irrespective of whether or not section 109, *supra*, applies.

In order to qualify for the payment from the county council, the requirements of the Regulations of 1935, contained in Articles 9 to 16, relating to the appointment, tenure of office and salary, must be complied with^(k).

Whenever a vacancy occurs in the office of medical officer of health, the procedure laid down in Article 11 of the Regulations of 1935, *infra*, must be followed.

*Article 11, Sanitary Officers (Outside London) Regulations, 1935.—
Procedure on appointment of medical officer of health.*

- (1) A local authority shall, before appointing any medical officer of health, submit to the Minister a statement in such form and containing such particulars relating to the appointment as may from time to time be required by the Minister.
- (2) A local authority shall, as soon as the approval of the Minister has been given to the proposals contained in the statement so submitted, cause to be inserted in some newspaper or newspapers circulating in the district, at least fourteen days before

^(k) Sect. 108(2), Local Government Act, 1933 ; 26 Halsbury's Statutes 363.

the date on which it is proposed that the appointment shall be considered by the authority, an advertisement specifying the district for which the appointment is to be made, together with the amount of the salary and of any travelling or other allowances proposed to be assigned, and stating the address to which applications for the appointment should be sent.

The terms of engagement of a medical officer of health may not be varied without the consent of the Minister of Health^(l) and see *Field v. Poplar B.C.* (*post*, p. 43).

Joint Appointment.—The Minister of Health is empowered to unite districts, on receipt of a representation from the local authorities concerned, for the purpose of the appointment of a medical officer of health. The order made by the Minister may contain provisions relating to the mode of appointment and removal of the officer, expenses and salary to be paid, and any other matters which in the opinion of the Minister require regulation^(m). The expression "district" means a county borough, non-county borough, or urban or rural district⁽ⁿ⁾. It is becoming increasingly more common for joint appointments of this kind to be made by the local authorities concerned. In some cases, the officers appointed, in addition to holding office as medical officers of health to a number of local authorities, also act as assistant medical officers of health to the county council.

Restrictions on private practice.—A county medical officer of health is restricted from engaging in private medical practice and he cannot hold any other public appointment without the approval of the Minister of Health^(o). Section 111 of the Local Government Act, 1933^(p), requires every county council, after consultation with the councils of county districts, to formulate a scheme, by a combination of areas or otherwise, whereby every medical officer of health appointed in the future is restricted from engaging in private practice, such scheme to be approved by the Minister of Health. In special cases, the Minister is empowered to dispense with this requirement and he may allow a medical officer of health to engage in private practice on such conditions as he thinks fit.

Tenure of office.—Section 110 of the Local Government Act, 1933, *infra*, governs the tenure of office of the medical officer of health.

(l) Art. 16, Sanitary Officers (Outside London) Regulations, 1935; S.R. and O., 1935, No. 1110.

(m) Sect. 112, Local Government Act, 1933; 26 Halsbury's Statutes 366.

(n) *Ibid.*

(o) *Ibid.*, sect. 103(6); *ibid.*, 361.

(p) *Ibid.*, 365.

Section 110, Local Government Act, 1933.—Tenure of office of medical officer of health and senior sanitary inspector.

(1) The following officers, that is to say—

- (a) a medical officer of health of a county borough or county district to whom this section applies, and who is restricted by the terms of his appointment from engaging in private practice as a medical practitioner; and
- (b) a sanitary inspector of a county borough or county district to whom this section applies, and who is required by the terms of his appointment to devote the whole of his time to the duties of his office, or to the duties of that office and of any other office or offices held by him under a local authority or a public body, shall not be appointed for a limited time only, and shall not be dismissed except by the council of the borough or district with the consent of the Minister, or by the Minister.

(2) This section applies—

- (a) to a medical officer of health or a sanitary inspector of a county borough to the council of which before it was constituted a county borough there was paid, either out of moneys voted by Parliament or by the county council, a portion of the salary of the medical officer of health or, as the case may be, of the sanitary inspector, of the borough; and
- (b) to a medical officer of health or a sanitary inspector of a county district, in respect of whose salary a payment is made by the county council under the last foregoing section:

Provided that, where more than one sanitary inspector is appointed for such a borough or district as aforesaid, the foregoing provisions of this section shall apply only to such one of the sanitary inspectors of the borough or district as the council may determine to be the senior sanitary inspector.

Where a medical officer of health is not by the terms of his appointment restricted from engaging in private medical practice, he must be appointed for a specified time ending on the 31st of March next following the date of his appointment, but the appointment may be determined at any time without notice by the Minister of Health or by the local authority with the consent of the Minister, but not otherwise(g).

A local authority may suspend a medical officer of health from the discharge of his duties but they must forthwith report the matter to the Minister, together with the cause thereof, and if directed by the Minister, the authority must forthwith remove the suspension. During suspension, the local authority may withhold the whole or any part of the salary of the medical officer of health payable in respect of the period of suspension, but the amount withheld must be

paid if the suspension is removed^(r). At least one month's notice to terminate his appointment must be given by the medical officer of health and this requirement must be embodied in the terms of his engagement^(s).

The medical officer of health of a county council holds office at the pleasure of the council and not for a limited period only, but the consent of the Minister of Health is required before he can be dismissed^(t).

The security of tenure conferred by section 110 of the Local Government Act, 1933, *supra*, extends to the medical officer of health of a county borough where a contribution towards the salary of the medical officer was made to the council before it was constituted a county borough. The county boroughs concerned are as follows—Bath, Birmingham, Blackpool, Bournemouth, Bristol, Canterbury, Cardiff, Carlisle, Chester, Coventry, Croydon, Darlington, Dewsbury, Eastbourne, East Ham, Gateshead, Great Yarmouth, Grimsby, Huddersfield, Liverpool, Merthyr Tydfil, Newport, Northampton, Portsmouth, Preston, Reading, St. Helen's, Smethwick, Southampton, Southend-on-Sea, Southport, South Shields, Sunderland, Swansea, Tynemouth, Wakefield, Wallasey, Warrington, West Bromwich, West Hartlepool^(u), and any county borough created after the year 1926.

Salary.—A local authority must pay to every medical officer of health such salary as may from time to time be approved by the Minister of Health^(v), and they may pay a reasonable gratuity on account of extraordinary services rendered, subject to the Minister's approval.

War service.—A local authority is empowered to pay to an employee who ceases to serve in his civil capacity in order to undertake war service, a sum which shall not exceed the remuneration which he would have received if he had continued to serve in his civil capacity, less the amount of his war service pay^(w). In the case of a medical officer of health undertaking war service and one-half of his salary is payable by the county council, then, provided some other person is appointed to act temporarily in his absence on war service, the local authority is entitled to recover from the county council one-half of the

^(r) *Ibid*, Art. 13.

^(s) *Ibid*, Art. 14.

^(t) Sect. 103(3), Local Government Act, 1933 ; 26 Halsbury's Statutes 360.

^(u) Circular 701, Ministry of Health, 29th May, 1926, paragraph 7 and Schedule.

^(v) Sanitary Officers (Outside London) Regulations, 1935, S.R. and O., 1935, No. 1110, Art. 15.

^(w) Sect. 1, Local Government Staffs (War Service) Act, 1939 ; 32 Halsbury's Statutes 1119.

sum paid to the medical officer in respect of his service with the forces, plus one-half the salary of the person acting temporarily as medical officer(x).

Duties.—The duties of medical officers of health are prescribed by Article 17 of the Sanitary Officers (Outside London) Regulations, 1935, *infra*, and compliance with this article is obligatory upon all local authorities.

*Article 17, Sanitary Officers (Outside London) Regulations, 1935.—
Duties of medical officers of health.*

A medical officer of health, in respect of the district for which he is appointed, shall—

- (1) inform himself as far as practicable respecting all matters affecting or likely to affect the public health in the district and be prepared to advise the local authority on any such matter ;
- (2) perform all the duties imposed on a medical officer of health by statute and by any orders, regulations or directions from time to time made or given by the Minister, and by any byelaws or instructions of the local authority applicable to his office ;
- (3) forward to the Minister by post every week in time to ensure its delivery on Monday, or the morning of Tuesday at the latest, a return, in such form as the Minister may from time to time require, of the number of cases of infectious disease notified to him during the week ended on the preceding Saturday night ; and also (in the case of a county district) forward at the same time a duplicate of the return to the medical officer or officers of health of the county or counties in which the district is situated ;
- (4) as soon as practicable after the 31st day of December in each year furnish to the Minister a report for his district (or in case of a union of districts for each constituent district) for the year ending on that date, relating to overcrowding within the meaning of the Housing Act, 1935, and showing—
 - (a) the number of dwellings overcrowded at the end of the year together with the number of families and the number of persons dwelling therein ;
 - (b) the number of new cases of overcrowding reported ;
 - (c) the number of cases of overcrowding relieved and the number of persons concerned ;
 - (d) particulars of any cases in which dwelling-houses in respect of which the local authority have taken steps for the abatement of overcrowding have again become overcrowded ;
 - (e) any other particulars with respect to conditions in relation to overcrowding upon which he may consider it desirable to report or which the Minister may from time to time require ;
- (5) as soon as practicable after the 31st December in each year make an annual report to the local authority for the year

ending on that date on the sanitary circumstances, the sanitary administration, and the vital statistics of the district, containing in addition to any other matters upon which he may consider it desirable to report, such information as may from time to time be required by the Minister and furnish the Minister with as many copies of such report as the Minister may from time to time require ;

- (6) furnish the Minister and in the case of a county district the county council each with one copy of any special report which he may make to the local authority ;
- (7) forthwith report to the Minister any case of plague, cholera or smallpox, or any serious outbreak of disease in the district which may be notified to him, or which may otherwise come or be brought to his knowledge, and, in the case of a county district, also notify the medical officer of health of the county.

The duties of a county medical officer of health are prescribed by Article 6 of the Regulations of 1935, as follows :—

*Article 6, Sanitary Officers (Outside London) Regulations, 1935.—
Duties of county medical officers of health.*

A medical officer of health of a county shall, in respect of the county for which he is appointed, in addition to any other duties which may be assigned to him by the county council, carry out the following duties :—

- (1) He shall inform himself as far as practicable respecting all matters affecting or likely to affect the public health in the county and be prepared to advise the county council on any such matter. For this purpose he shall visit the several county districts in the county as occasion may require, giving to the medical officer of health of each county district prior notice of his visit, so far as this may be practicable ;
- (2) He shall perform all the duties imposed on a medical officer of health of a county by statute and by any orders, regulations or directions from time to time made or given by the Minister ;
- (3) He shall as soon as practicable after the 31st day of December in each year make an annual report to the county council for the year ending on that date on the sanitary circumstances, the sanitary administration and the vital statistics of the county, containing in addition to any other matters upon which he may consider it desirable to report, such information as may from time to time be required by the Minister, and furnish the Minister with as many copies of such report as the Minister may from time to time require ;
- (4) He shall furnish the Minister with one copy of any special report which he may make to the county council.

Section 113 of the Local Government Act, 1933(y), requires the medical officer of health of a county district to give

to the medical officer of health of the county council any information which it is in his power to give and which the county medical officer may reasonably require from him for the purpose of his duties. If any disputes arise between a county medical officer of health and a county district medical officer, the matter must be referred to the Minister of Health, whose decision is final.

A medical officer of health may exercise any of the powers with which a sanitary inspector is invested⁽²⁾.

SANITARY INSPECTORS.

Qualifications.—Article 20, *infra*, of the Regulations of 1935, prescribes the qualifications of sanitary inspectors—

Article 20, Sanitary Officers (Outside London) Regulations, 1935.—Qualifications of sanitary inspectors.

A person shall not be qualified to be hereafter appointed as a sanitary inspector of any district unless he is the holder of—

- (a) a certificate of the Royal Sanitary Institute and Sanitary Inspectors' Examination Joint Board; or
- (b) a certificate of the late Sanitary Inspectors' Examination Board; or
- (c) a certificate of the Royal Sanitary Institute issued before the 1st day of January, 1926:

Provided that if the local authority employ a qualified veterinary surgeon for purposes connected with the inspection of meat they may, with the approval of the Minister, appoint him as a sanitary inspector for the purpose only of exercising the powers and duties of such an officer in relation to meat, notwithstanding that he does not possess any of the qualifications prescribed by this Article.

The present examination for the qualifying certificate as a sanitary inspector is conducted by the Royal Sanitary Institute and Sanitary Inspectors' Examination Joint Board^(a) and full particulars may be obtained from the Registrar and Secretary.

In addition to the above, practically every local authority now requires their sanitary inspectors to possess the certificate as inspectors of meat and other foods granted by the Royal Sanitary Institute, and many inspectors also hold additional qualifications, including the certificates of the Royal Sanitary Institute for a knowledge of Sanitary Science as applied to Buildings and Public Works and as a smoke inspector; the certificate of the Institute of Sanitary Engineers; the diploma of the Royal Institute of Public Health and Hygiene; and the diploma of the Institute of Public Cleansing.

⁽²⁾ Sect. 108(4), Local Government Act, 1933; 26 Halsbury's Statutes 363.

^(a) Address: 90, Buckingham Palace Road, S.W.1.

The Sanitary Inspectors Association has now established a comprehensive Diploma Examination, consisting of Section 1—Environmental Hygiene; Section 2—Food Inspection; and Section 3—Local Government Law and Sanitary Administration. Full particulars of this examination may be obtained from the Secretary of the Association(*b*).

Appointment.—The appointment of a sanitary inspector is subject to the approval of the Minister of Health in every case where a payment is made by the county council towards the salary of such officer, paid in accordance with section 109 of the Local Government Act, 1933 (see *ante*, p. 35).

In order to qualify for the payment referred to above, the requirements of the Sanitary Officers (Outside London) Regulations, 1935, contained in Articles 19 to 28 and relating to the qualifications, appointment, tenure of office, salary and duties of sanitary inspectors, must be complied with(*c*).

Whenever a vacancy occurs in the office of sanitary inspector, the same procedure must be followed as is laid down in Article 11 of the Regulations of 1935 regarding medical officers of health (see *ante*, p. 36).

The terms of engagement of a sanitary inspector may not be varied without the consent of the Minister of Health(*d*). It has been held that the salary of a sanitary inspector cannot be reduced without his consent and the approval of the Minister. An agreement with an association of which the sanitary inspector is a member does not bind such officer if he opposes the terms approved by the association(*e*).

Tenure of office.—Section 110 of the Local Government Act, 1933 (see *ante*, p. 38), gives security of tenure to such one of the sanitary inspectors of a local authority as the council may determine to be the senior.

In the case of sanitary inspectors whose appointment is not subject to the provisions of sections 110, *supra*, their appointment must be for a specified period ending on the 31st March next following the date of appointment. Subject to the provisions of the Regulations of 1935, every sanitary inspector appointed for a specified term, holds office from year to year, unless the local authority by resolution not less than three months before the expiration of the term, determine the appointment(*f*).

(*b*) Address : 19, Grosvenor Place, S.W. 1.

(*c*) Sect. 108(2). Local Government Act, 1933; 26 Halsbury's Statutes 363.

(*d*) Art. 26, Sanitary Officers (Outside London) Regulations, 1935; S.R. and O., 1935, No. 1110.

(*e*) *Field v. Poplar B.C.*, [1929] 1 K. B. 750; Digest Supp.

(*f*) Art. 22, Sanitary Officers (Outside London) Regulations, 1935; S.R. and O., 1935, No. 1110.

The security of tenure conferred by section 110, *supra*, extends to the senior sanitary inspector of a county borough where a contribution towards the salary of the inspector was made to the council before it was constituted a county borough. The county boroughs concerned are as follows—Birmingham, Blackpool, Bournemouth, Canterbury, Cardiff, Carlisle, Chester, Darlington, Dewsbury, Eastbourne, East Ham, Gloucester, Great Yarmouth, Grimsby, Huddersfield, Liverpool, Merthyr Tydfil, Northampton, Portsmouth, Reading, Rotherham, St. Helen's, Smethwick, Southampton, Southend-on-Sea, Southport, South Shields, Sunderland, Swansea, Tynemouth, Wakefield, Wallasey, West Bromwich, West Hartlepool(g), and any county borough created after the year 1926.

Where a sanitary inspector does not devote the whole of his time to the duties of his office or to some other office held under a local authority, he may not undertake private business arising out of, or in any way connected with, the discharge of his duties as sanitary inspector(h).

Salary.—A local authority must pay to every sanitary inspector such salary as may from time to time be approved by the Minister of Health and they may pay a reasonable gratuity on account of extraordinary services rendered, subject to the Minister's approval(i).

War service.—A local authority is empowered to pay to an employee who ceases to serve in his civil capacity in order to undertake war service, a sum which shall not exceed the remuneration which he would have received if he had continued to serve in his civil capacity, less the amount of his war service pay(k). In the case of a sanitary inspector undertaking war service and one-half of his salary is payable by the county council, then, provided some other person is appointed to act temporarily in his absence on war service, the local authority is entitled to recover from the county council one-half of the sum paid to the sanitary inspector in respect of his service with the forces, plus one-half the salary of the person acting temporarily as sanitary inspector(l). The superannuation rights of local

(g) Circular 701, Ministry of Health, 29th May, 1926, paragraph 7 and Schedule.

(h) Art. 23, Sanitary Officers (Outside London) Regulations, 1935; S.R. and O., 1935, No. 1110.

(i) *Ibid.*, Art. 25.

(k) Sect. 1, Local Government Staffs (War Service) Act, 1939; 32 Halsbury's Statutes 1119.

(l) *Ibid.*, sect. 2.

government officers are protected, the period of war service being aggregated with the period of service in a civil capacity(a).

Duties.—The duties of sanitary inspectors are prescribed by Article 27 of the Regulations of 1935, *infra*.

Article 27, Sanitary Officers (Outside London) Regulations, 1935.—Duties of sanitary inspectors.

The sanitary inspector as regards the district for which he is appointed shall, except as provided by Article 28 of these Regulations—

- (1) perform under the general direction of the medical officer of health all the duties imposed on a sanitary inspector by statute and by any orders, regulations or directions from time to time made or given by the Minister, and by any byelaws or instructions of the local authority applicable to his office ;
- (2) by inspection of his district, both systematically and at intervals as occasion requires, keep himself informed of the sanitary circumstances of the district and of the nuisances therein that require abatement(b) ;
- (3) report to the local authority any noxious or offensive businesses, trades or manufactories established within his district, and the breach or non-observance of any byelaws or regulations made in respect thereof(c) ;
- (4) report to the local authority any damage done to any works of water supply or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise of water used or intended to be used for domestic purposes(d) ;
- (5) from time to time and forthwith upon complaint, visit and inspect the shops and places kept or used for the preparation or sale of any article of food to which the provisions of the statutes and regulations in that behalf apply, and examine any article of food therein, and take such proceedings as may be necessary :

Provided that in any case of doubt arising under this paragraph, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon(e) ;

- (6) if so directed by the local authority, carry out the duties of a sampling officer under the Food and Drugs (Adulteration) Act, 1928(f) ;
- (7) if so directed by the local authority, inspect premises used as dairies for the purposes of the Milk and Dairies (Consolidation) Act, 1915, or the Milk and Dairies (Amendment) Act, 1922, or any Act amending those Acts, and any Orders or Regulations made thereunder(g) ;

(a) Sect. 3, Local Government Staffs (War Service) Act, 1939 ; 32 Halsbury's Statutes 1120.

(b) See chapter 9, *post*, p. 216, as to the abatement of nuisances.

(c) See chapter 10, *post*, p. 251, as to offensive trades.

(d) See chapter 7, *post*, p. 156, as to water supply.

(e) The subject of unsound food is not dealt with in the present volume.

(f) The subject of food adulteration is not dealt with in the present volume.

(g) The subject of milk control is not dealt with in the present volume.

- (8) give immediate notice to the medical officer of health of the occurrence within his district of any infectious or epidemic disease or other serious outbreak of illness ; and whenever it appear to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house or of any other conditions affecting the health of the district, forthwith inform the medical officer of health thereof(*h*) ;
- (9) if so directed by the medical officer of health, remove, or superintend the removal of, patients suffering from infectious disease to an infectious diseases hospital, and perform or superintend the work of disinfection after the occurrence of cases of infectious disease(*i*) ;
- (10) if so directed by the local authority, supervise the scavenging of his district or any part thereof(*k*) ;
- (11) if so directed by the local authority, act as officer of the local authority under the Canal Boats Acts, 1877 and 1884, and the Rats and Mice (Destruction) Act, 1919, and under any order or regulations made thereunder(*l*) ;
- (12) if so directed by the local authority, act as designated officer for the purposes of the Housing Consolidated Regulations, 1925 and 1932(*m*) ;
- (13) if so directed by the local authority, perform duties of inspection under Part I of the Housing Act, 1935(*n*) ;
- (14) if so directed by the local authority, superintend and see to the due execution of all works which may be undertaken by their direction for the suppression or removal of nuisances(*o*) ;
- (15) carry out any duties imposed upon him by the local authority with reference to the provisions of the Shops Act, 1934, relating to ventilation, temperature and sanitary conditions(*p*) ;
- (16) enter from day to day, in a book or on separate sheets or cards provided by the local authority, particulars of his inspections and of the action taken by him in the execution of his duties ;
- (17) at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of sanitary inspector relate ; and

(*h*) See chapter 19, *post*, p. 417, as to infectious diseases.

(*i*) See chapter 20, *post*, p. 478, as to disinfection.

(*k*) See chapter 8, *post*, p. 177, as to refuse.

(*l*) The Canal Boats Acts, 1877 and 1884, are repealed by the Public Health Act, 1936, Part X of that Act dealing with the subject of canal boats ; see chapter 16, *post*, p. 372 ; and see the author's "Housing Administration," 2nd Edn., as to the destruction of rats and mice.

(*m*) As to housing, see the author's "Housing Administration," 2nd Edn.

(*n*) See now Part IV, Housing Act, 1936, as to which see the author's "Housing Administration," 2nd Edn.

(*o*) See chapter 9, *post*, p. 216, as to nuisances.

(*p*) See chapter 15, *post*, p. 356, as to shops.

- (18) as soon as practicable after the 31st December in each year, furnish the medical officer of health with a tabular statement containing the following particulars—
- (a) the number and nature of inspections made by him during the year ;
 - (b) the number of notices served during the year, distinguishing statutory from other notices ;
 - (c) the result of the service of such notices.

Article 28 of the Regulations of 1935, enables a local authority to distribute among their sanitary inspectors, the various duties prescribed in Article 27, *supra*.

GENERAL PROVISIONS WITH REGARD TO OFFICERS.

Appointment of deputies.—A local authority are empowered by section 115 of the Local Government Act, 1933(*q*), to appoint a deputy medical officer of health or deputy sanitary inspector, for the purpose of acting in place of the medical officer of health or sanitary inspector when such post is vacant or the officer unable to act. Where the appointment of medical officer of health or sanitary inspector is subject to the approval of the Minister of Health, the appointment of a deputy to such officers must also be approved by the Minister.

Appointment of temporary deputies.—In the absence of a properly appointed deputy, a local authority may appoint a person to act temporarily as medical officer of health or sanitary inspector, subject to the approval of the Minister of Health in those districts where the Minister has to sanction the appointment of such officers(*r*).

Members of local authorities not to be appointed as officers.—A member of a local authority may not be appointed as an officer of that authority until the expiration of twelve months after he ceases to be a member thereof(*s*).

Membership of trade union.—A local authority may not make it a condition of employment that the person shall, or shall not, be a member of a trade union, and they may not place an employee under any disability for that reason(*t*).

Interest of officers in contracts.—Section 123 of the Local Government Act, 1933(*u*), requires an officer of a local authority to inform that authority in writing if he has any pecuniary

(*q*) 26 Halsbury's Statutes 367.

(*r*) Sect. 116, Local Government Act, 1933 ; 26 Halsbury's Statutes 368.

(*s*) *Ibid*, sect. 124 ; 26 Halsbury's Statutes 372.

(*t*) Sect. 6, Trade Disputes and Trade Union Act, 1927 ; 19 Halsbury's Statutes 749.

(*u*) 26 Halsbury's Statutes 371.

interest (whether direct or indirect) in any contract made or about to be made by the authority.

An officer is to be deemed to have indirectly a pecuniary interest in a contract or other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration :

Provided that—

- (i) this subsection shall not apply to membership of, or employment under, any public body ;
- (ii) a member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body.

In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also an interest of that other spouse^(v).

Gifts or gratuities to officers.—Subsection (2) of section 123 of the Local Government Act, 1933, *supra*, prohibits an officer of a local authority from accepting any fee or reward whatsoever under colour of his office or employment, other than his proper remuneration.

Protection of officers.—Section 305 of the Act of 1936^(w) applies the provisions of section 265 of the Public Health Act, 1875, *infra*, to the various local authorities under the Act of 1936.

Section 265, Public Health Act, 1875.—Protection of local authority and their officers from person liability.

No matter or thing done, and no contract entered into by any local authority or joint board, or port sanitary authority, and no matter or thing done by any member of any such authority, or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever ; and any expenses incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor

^(v) Sect. 76(2), (3), Local Government Act, 1933 ; 26 Halsbury's Statutes 346.

^(w) 29 Halsbury's Statutes 516.

in the accounts of such authority, and which such member authorised or joined in authorising.

The effect of this section is to render the local authority and not any individual member or officer, liable in respect of damages arising from the bona fide enforcement of the Public Health Act. Action against local authorities can only be brought if commenced before the expiration of one year from the date on which the cause of action accrued(*x*). It was held under the Public Authorities Protection Act, 1893(*y*), that officers of a public authority, carrying out a duty which could only be performed by individuals (in this case, medical officers), were entitled to the protection of the Act(*z*).

Reports by officers.—Under the repealed Public Health Acts, 1875 to 1932, a local authority were precluded from taking action under many of the sections until they had received a report from one of their officers, either the sanitary inspector, medical officer of health or surveyor. In the Act of 1936 this restriction has been very largely removed, local authorities being empowered to take the appropriate action when they are satisfied that it is reasonable to do so or certain specified conditions exist. As pointed out, *post*, p. 57, however, section 287 of the Act of 1936 (see *post*, p. 52), does not provide a right of entry for members of a local authority, so that in effect it will still be necessary for officers to submit recommendations and reports, and in general the established practice is likely to continue.

Under Part V of the Act of 1936 (see chapter 19, *post*, p. 417) action with regard to the prevention and treatment of infectious diseases, depends upon the certificate of the medical officer of health, and sections 83 to 85, relating to verminous premises, articles and persons (see chapter 20, *post*, p. 484) necessitates a certificate either of the medical officer or sanitary inspector, before action can be taken by a local authority.

The preparation and submission of reports is a most important part of the work of an executive sanitary officer, and the ability to produce clear, concise, and convincing reports is a qualification of considerable value to all such officers. Reports should be prepared in a systematic manner and should deal with each or all of the following points, *viz.* :—

- (1) Facts of the matter ;
- (2) Legal powers of the local authority ;
- (3) Technical considerations ;

(*x*) Sect. 21, The Limitation Act, 1939 ; 32 Halsbury's Statutes 235.

(*y*) 13 Halsbury's Statutes 455.

(*z*) *Nelson v. Cookson*, [1940] ; 1 K.B. 100 ; Digest Supp.

- (4) Administrative considerations ;
- (5) Cost of proposals to local authority (if any) ;
- (6) Recommendations for action by local authority.

“ **Authorised officers.** ”—Section 343 of the Act of 1936, defines an “ authorised officer ” as any officer of a local authority authorised by them in writing, either generally or specially, to act in matters of any specified kind, or in any specified matter, provided that the medical officer of health, sanitary inspector and surveyor, are authorised officers, ex-officio, as respects any matters within their respective provinces. It is unnecessary therefore for a sanitary officer to be specially authorised in respect of matters coming within his province in the Act of 1936 but it will be necessary for him to be provided with a certificate of appointment by the local authority. In addition, sanitary officers possess many further powers under other Acts and it is convenient to supply each officer with one authorisation certificate to cover the whole of his duties. A suitable form of authority will be found in chapter 4 (see *post*, p. 54).

The Act of 1936 does not specify which matters come within the respective provinces of the medical officer of health, sanitary inspector and surveyor, but the summary in Table VII indicates the matters usually dealt with by the sanitary inspector. The division of duties, as between the three officers, differs in individual districts, particularly in regard to such matters as public cleansing and water supply. In general, however, it will be found that the undermentioned items come within the sphere of activity of the sanitary inspector, and in connection therewith, the sanitary inspector does not require to be specially authorised. In districts where more than one sanitary inspector is appointed, it is necessary for all the inspectors to be appointed as sanitary inspectors under the Act, otherwise the assistant or district inspectors would have no general power of entry and would require special authority to act in each individual case.

TABLE VII

Duties coming within the province of the Sanitary Inspector under the Public Health Act, 1936.

Section.	Subject matter.	Reference to text.
38	Drainage of buildings in combination	127
39	Provisions as to drainage, etc., of existing buildings	128
40	Provisions as to soil pipes and ventilating shafts	131

TABLE VII—*continued.*

Section.	Subject matter.	Reference to text.
41	Notice to be given of repair, etc., to drains	132
42	Alteration of drainage system	132
43	Closet accommodation for new buildings	139
44	Insufficient closet accommodation	141
45	Defective closet accommodation	143
46	Sanitary conveniences for factories, etc.	331
47	Conversion of closet accommodation	144
48	Examination and testing of drains	133
49	Rooms over closets, etc., not to be used as living, sleeping or work rooms	137
50	Overflowing or leaking cesspools	136
51	Care of closets	151
52	Care of sanitary conveniences used in common	151
56	Yards and passages to be paved and drained	131
72/82	Removal of refuse, scavenging, keeping of animals, etc.	177 <i>et seq.</i>
83/85	Verminous premises, articles and persons	484
88	Control over conveniences in, or accessible from, streets	153
89	Power to require sanitary conveniences to be provided at inns, refreshment houses, etc.	148
91/110	Nuisances and offensive trades	216 <i>et seq.</i>
137	New houses to be provided with supply of water	171
138	Power of local authority to require any occupied house to be provided with sufficient water supply	172
140	Power to close, or restrict use of water from, polluted source of supply	175
141	Insanitary water cisterns	156
154	Rag and bone dealers	267
235/241	Common lodging houses	403 <i>et seq.</i>
249/255	Canal boats	372 <i>et seq.</i>
259/266	Watercourses and streams	282 <i>et seq.</i>
267	Ships	83
268/270	Tents, vans, sheds, fruitpickers' lodgings	389 <i>et seq.</i>

CHAPTER 4.

LEGAL AND ADMINISTRATIVE PROCEDURE.

POWER OF ENTRY.

It is of the utmost importance that sanitary officers should be aware of the powers of entry to various premises coming within the scope of the Public Health and other Acts dealing with sanitary administration.

(a) **Generally under the Public Health Act, 1936.**—The Act of 1936 simplifies the procedure with regard to entry on to premises, and in place of a number of separate sections dealing with the matter, it is now governed by section 287, *infra*, except in certain cases referred to later (see *post*, p. 58).

Section 287, Public Health Act, 1936.—Power to enter premises.

(1) Subject to the provisions of this section, any authorised officer of a council shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act or of any byelaws made thereunder, being provisions which it is the duty of the council to enforce;
- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the council to take any action, or execute any work, under this Act or any such byelaws;
- (c) for the purpose of taking any action, or executing any work, authorised or required by this Act or any such byelaws, or any order made under this Act, to be taken, or executed, by the council;
- (d) generally, for the purpose of the performance by the council of their functions under this Act or any such byelaws:

Provided that admission to any premises not being a factory, workshop or workplace, shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier

(2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application

(b) that there is reasonable ground for entry into the premises for any such purpose as aforesaid,
the justice may by warrant under his hand authorise the council by any authorised officer to enter the premises, if need be by force :

Provided that such a warrant shall not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

- (3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectually secured against trespassers as he found them.
- (4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.
- (5) If any person who in compliance with the provisions of this section or of a warrant issued thereunder is admitted into a factory, workshop or workplace discloses to any person any information obtained by him in the factory, workshop or workplace with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months.
- (6) Nothing in this section shall be construed as limiting the provisions of section fifty-seven of the Waterworks Clauses Act, 1847, as incorporated with this Act, or the provisions of Part VII of this Act with respect to entry upon and inspection of premises by child protection visitors and persons authorised to exercise the powers of such visitors, or the provisions of Parts IX and X of this Act with respect to entry into or upon and inspection of, common lodging-houses and canal boats.

It will be observed that entry may be made by an "authorised officer," defined in section 343 of the Act of 1936 as follows :—

"authorised officer" means, as respects any council, an officer of the council authorised by them in writing, either generally or specially, to act in matters of any specified kind, or in any specified matter :

Provided that the medical officer of health, surveyor and sanitary inspector of a council shall, by virtue of their appointments, be deemed to be authorised officers for the purpose of matters within their respective provinces (see *ante*, p. 50).

Before issuing an authorisation certificate, it is necessary for the officer to have been properly appointed by resolution of the local authority. A suitable form of authorisation certificate for a sanitary inspector is as follows :—

Form of Authority for a Sanitary Inspector under the Public Health and other Acts.

CITY OF OXFORD.

THIS IS TO CERTIFY THAT A.B. is a duly appointed Sanitary Inspector for the said City of Oxford and that he is authorised to make the inspections required under the undermentioned Acts or any of them in the said City, *viz.* :—
Public Health Act, 1936.

[*add details of other Acts required*].

And under all other Acts amending or extending the said Acts detailed above and under any Regulations, Byelaws and Orders made under such Acts.

Dated this.....day of.....19..

C. D.,

Town Hall,
Oxford.

Town Clerk.

It will be seen that, with the exception of factories and workplaces, not less than 24 hours' notice of the intended entry must be given to the occupier and the following form of notice may be used for this purpose.

Form of Notice of Intention to Enter Premises for the purposes of the Public Health Act, 1936.PUBLIC HEALTH ACT, 1936.
Section 287.

To :¹.....
the occupier of the premises....².....

TAKE NOTICE, that I, A. B.,³ Sanitary Inspector to the Council for the⁴.....intend to enter the premises².....between the hours of.....and.....on the.....day of....., 19.., for the purpose of inspecting the said premises in order to ascertain whether any of the provisions of the Public Health Act, 1936, or any byelaws made thereunder, require to be enforced in respect of the said premises.

Dated this.....day of.....19....

(Signed) A. B.

Sanitary Inspector to the
⁴.....
Public Health Department,
⁵.....

Directions for completing this form.

¹—Name of occupier (if known) ;

²—Address of premises ;

³—Name of authorised officer ;

⁴—Description of local authority ;

⁵—Office of authorised officer.

It must be emphasized that, with the exception of factories and workplaces, an officer is not entitled to demand entry to any premises under the Public Health Act in accordance with section 287, *ante*, p. 52, unless—

- (1) Twenty-four hours' notice has been given to the occupier; and
- (2) A properly authorised certificate or document is produced showing the officer's right of entry.

If entry is refused after compliance with the above requirements, complaint must be made to a justice, in accordance with subsection (2) of section 287, *supra*, with a view to the issue of a warrant.

Where entry is effected without the permission of the occupier or without the warrant of a justice, and the occupier prevents the officer from leaving the premises, no offence is committed under section 288 (see *post*, p. 57)(a).

Where entry has been refused and it is desired to apply to a justice for a warrant authorising entry on to the premises in accordance with subsection (2) of section 287, *supra*, it will be observed that except—

- (1) in the case of unoccupied premises; or
- (2) in case of urgency; or
- (3) the occupier is temporarily absent; or
- (4) where the giving of notice would defeat the object of the entry,

notice of the intention to apply to the justice *must* be given to the occupier prior to the making of the application. The following form of notice may be used for this purpose.

Form of Notice of Intention to apply to a Justice for a Warrant authorising entry on to premises for the purposes of the Public Health Act, 1936.

PUBLIC HEALTH ACT, 1936.
Section 287.

To :¹.....
the occupier of the premises².....
TAKE NOTICE, that I, A. B.³, Sanitary Inspector to the Council
for the⁴....., intend, at..... o'clock
on the..... day of..... 19....
to make application to C. D.⁵, one of His Majesty's Justices of
the Peace for the⁶....., for a
Warrant authorising me to enter the said premises².....
of which you are the occupier, in order to ascertain whether
any of the provisions of the Public Health Act, 1936, or of any
byelaws made thereunder, require to be enforced in respect of
the said premises.
Dated this..... day of..... 19....
(signed) A. B.,
Sanitary Inspector to the
⁴.....
Public Health Department
⁷.....

(a) *Consett U.D.C. v. Crawford*, [1903] 2 K.B. 183; 36 Digest 239, 776.

Directions for completing this form.

- 1.—Name of occupier (if known) ;
- 2.—Address of premises ;
- 3.—Name of authorised officer ;
- 4.—Description of local authority ;
- 5.—Name of Justice of the Peace ;
- 6.—District for which Justice acts ;
- 7.—Office of authorised officer.

Subsection (2) of section 287, *ante*, p. 52, requires the justice to be satisfied that there is reasonable grounds for entry being necessary and it was held under the Public Health (London) Act, 1891(*b*), that it was not sufficient for an officer merely to show that he was acting honestly in the discharge of his duties(*c*), definite evidence as to the necessity for entry for a specified purpose must be shown to exist to the justice's satisfaction. At the same time, it is not necessary for the justice to be satisfied that, for example, a nuisance definitely exists. If there are reasonable grounds for suspecting the existence of the nuisance, a warrant authorising entry may be given(*d*).

Where a justice has issued a warrant authorising an officer to enter premises, entry may be made by force if necessary, but except in special cases it is not desirable to use force to enter premises. Unless it is absolutely essential to force an entry it is wiser to take proceedings for obstruction (see *post*, p. 57).

It will be seen that subsection (3) of section 287, *supra*, enables an authorised officer to take with him any other person as may be necessary for the purposes of the inspection, so that where a witness is required, it is unnecessary for the second person to be specially authorised for the purposes of entry. In cases where entry is refused, it is always desirable for a second person to accompany the authorised officer, in order to witness the proceedings, so as to be able to give evidence in support of the officer if action has to be taken in the courts. At the same time, it is desirable, whenever possible, that the witness should be a properly trained sanitary officer, so that he can speak with knowledge not only of the actual happenings at the time of entry (or refusal), but also of the conditions existing at the premises.

It should be observed that as compared to section 102 of the Public Health Act, 1875(*e*)—the most important

(*b*) Sect. 115 ; 11 Halsbury's Statutes 1088.

(*c*) *Vines v. North London Collegiate Schools* (1899), 63 J.P. 244 ; 36 Digest 239, 778.

(*d*) *Wimbledon U.D.C. v. Hastings* (1902), 67 J.P. 45 ; 36 Digest 180, 245.

(*e*) 13 Halsbury's Statutes 665.

section dealing with the powers of entry under the Public Health Acts, 1875 to 1932—section 287, *ante*, p. 52, differs in an important particular, in that the power of entry is conferred upon an authorised officer and not upon the local authority as well, and it would appear that members of an authority are no longer entitled to enter premises for the purposes of the Public Health Act. Section 287 also differs from section 102 of the Act of 1875 in regard to the times when entry may be made. In the former section, entry may be at all “reasonable hours,” whereas under the repealed provision, the hours were specified as between 9 a.m. and 6 p.m. In actual practice the difference is likely to prove of little importance, as in the majority of cases the above hours will be “reasonable” within the meaning of the Act of 1936. At the same time, however, the wording of section 287, *supra*, does enable entry to be made either before 9 a.m. or after 6 p.m. where it is reasonable to do so for the particular purpose in view.

Penalty for obstruction.—Section 288 of the Act of 1936 imposes a penalty not exceeding five pounds, and a daily penalty of five pounds for each day on which the offence continues after conviction, upon any person who wilfully obstructs any officer acting in the execution of the Act or of any byelaw, order or warrant made or issued thereunder.

It has been held(*f*) that wilful obstruction need not amount to actual physical force.

(b) **Special powers of entry under the Public Health Act, 1936.**—In addition to the general powers of entry under the Act of 1936 contained in section 287, *supra*, the following special powers are provided, *viz* :—

(i) *Nursing Homes.*—Section 191 of the Act of 1936(*ff*) empowers the medical officer of health of a county or county borough council, or a qualified nurse or other authorised officer, to enter and inspect at all reasonable times, any premises which are used, or which the officer has reasonable cause to believe to be used, for the purposes of a nursing home, and to inspect any records required to be kept by Part VI of the Act, except the medical record relating to any patient in the nursing home. Where a county council have delegated to a county district council, in accordance with section 194 of the Act of 1936(*g*), any of their functions under that Act with regard to nursing homes, subsection (3) of section 194, *supra*, gives similar powers of entry to officers of the county district council as are possessed by officers of the county council under section 191, *supra*.

(*f*) *Borrow v. Howland* (1896), 60 J.P. 391; 38 Digest 236, 652.

(*ff*) 29 Halsbury's Statutes 455.

(*g*) 29 Halsbury's Statutes 456.

(ii) *Child protection visitors.*—It is the duty of certain local authorities (called “welfare authorities” (gg)) to appoint child protection visitors, whose duty includes the visiting of any foster children and the premises in which they are kept. If any person refuses to allow any such visitor to visit or examine the child or the premises, such person is guilty of an offence under Part VII of the Act of 1936(h), and a visitor may apply to a justice to grant a warrant authorising entry on to the premises(i).

(iii) *Canal boats.*—Section 255 of the Act of 1936 (see *post*, p. 385) empowers an authorised officer of a local authority or port health authority, to enter and examine a canal boat, between the hours of 6 a.m. and 9 p.m., and he may detain a boat for such period as may be necessary for the purposes of the examination.

(iv) *Common lodging-houses.*—The keeper or other person in control of a common lodging-house is required by section 241(4) of the Act of 1936 (see *post*, p. 409), to permit an authorised officer of a local authority to have free access to all parts of the house and *at all times*.

(v) *Premises, vessels and aircraft subject to Regulations of the Minister of Health relating to infectious diseases.*—The Minister of Health is empowered by section 143 of the Act of 1936 (see *post*, p. 417), to make regulations with a view to the treatment of certain diseases and for preventing the spread of such diseases. Subsection (4) of that section gives power of entry to authorised officers of a local authority to any premises, vessels, or aircraft for the purpose of the execution of such regulations.

(c) **Additional powers of entry for purposes of sanitary administration.**—In addition to the powers of entry contained in the Act of 1936, referred to in the preceding pages, special powers of entry are provided to the undermentioned premises.

(i) *Factories.*—A factory inspector is empowered by section 123 of the Factories Act, 1937(k), to enter, inspect and examine, at all reasonable times by day or night, any factory, and section 128(5)(l) applies the provisions of section 123, *supra*, to factories and workplaces, so that officers of district councils have the same power of entry as that possessed by the factory inspector (see *post*, p. 349).

(gg) See definition, sect. 200, Public Health Act, 1936; 20 Halsbury's Statutes 460.

(h) See *ibid*, sect. 217; 29 Halsbury's Statutes 468.

(i) *Ibid*, sect. 209; 29 Halsbury's Statutes 465.

(k) 29 Halsbury's Statutes 287

(ii) *Shops*.—Section 13(1) of the Shops Act, 1912(*m*), applies the provisions of section 123 of the Factories Act, 1937, *supra*, to the inspection of shops under the Shops Act, 1912 and 1934, so that a properly authorised officer is empowered to enter and examine, at all reasonable times by day or night, any shops to which the said Acts apply (see *post*, p. 369).

(iii) *Underground rooms*(*n*).—Underground rooms are dealt with under the Housing Act, 1936, section 157 of which empowers an authorised officer to enter any premises, after giving twenty-four hours' notice to the occupier, and to the owner, stating the object of the visit, for the purpose of survey and examination. A special form of notice of intention to inspect premises has been prescribed by the Minister of Health(*o*). If any person obstructs an officer authorised to enter premises, he is liable to a penalty not exceeding £20(*p*).

(iv) *Premises on which rag flock is kept*.—The medical officer of health, sanitary inspector, or other authorised officer of the local authority, is empowered by section 1(5) of the Rag Flock Act, 1911(*q*), to enter any premises, at all reasonable times, for the purposes of examining any rag flock or taking samples for analysis (see *post*, p. 354).

(v) *Powers of entry of county medical officer of health*.—Subsection (5) of section 103 of the Local Government Act, 1933(*r*), gives the county medical officer of health all the powers of entry on premises as are conferred on a medical officer of health of a county district.

(d) **Summary of powers of entry**.—The powers of entry on to premises for the purposes of sanitary administration, referred to in the preceding pages, are summarised in Table VIII, p. 60.

NOTICES, ETC.

(a) **Form of notices, etc.**—Section 283 of the Act of 1936 requires all notices, issued or received by a local authority to be in writing, and the Minister of Health may by regula-

(*m*) 8 Halsbury's Statutes 621.

(*n*) As to underground rooms generally, see the author's "Housing Administration," 2nd Edn., 1938, p. 326 *et seq.* Butterworth & Co.

(*o*) Form 1, Housing Act (Form of Orders and Notices) Regulations, 1937; S.R. and O., 1937, No. 78.

(*p*) Sect. 158, Housing Act, 1936; 29 Halsbury's Statutes 669.

(*q*) 13 Halsbury's Statutes 950.

(*r*) 26 Halsbury's Statutes 360.

TABLE VIII.—Summary of Powers of Entry.

Premises.	Purpose of Entry.	Notice if any.	Time.	Statute.	Refer- ence to Text.
Any premises	Enforcement of Public Health Act, 1936, and byelaws made thereunder	24 hours' to occupier, except in the case of factories, workshops and workplaces	All reasonable hours	Public Health Act, 1936, sect. 287	Page 52
Any premises, vessel or aircraft	Enforcement of regulations regarding infectious diseases	Not stated	Not stated	ditto sect. 143(4)	417
Nursing homes	Inspection of premises	None	All reasonable times	ditto { sect. 191 " 194(3)	—
Common lodging-houses ditto	Inspection of premises Examination of inmates by M.O.H.	None None	At all times "	ditto sect. 241 ditto sect. 243	409 411
Canal boats	Inspection of boats	None	6 a.m.-9 p.m.	ditto sect. 255	385
Premises where foster children received	Inspection of premises and examination of children	None	Any time	ditto sect. 209	—
Underground rooms	Survey and examination	24 hours' written notice	At all reasonable times	Housing Act, 1936, sect. 157	—
Factories and work-places	Inspection of premises	None	Day or night	Factories Act, 1937, sects. 123 & 128(5)	349
Any premises	Examination of rag flock	None	At all reasonable hours	Rag Flock Act, 1911, Sect. 1(5)	354
Shops	Inspection of premises	None	Day or night	Shops Act, 1912, Sect. 13(1)	369

tions prescribe the form of any notice, etc. It was held that the forms prescribed in the repealed Schedule IV of the Public Health Act, 1875(s), indicated what the forms should contain and that they need not be followed precisely(t). The Minister has not yet made any regulations dealing with this matter but in any case, every notice must—

- (1) indicate the nature of the works to be executed ; and
- (2) state the time within which such works are to be executed(u).

It should be observed that the notice must “ indicate ” the nature of the works, and not “ specify ” what has to be done. This distinction is important, and care should be taken not to go into such detail that the person served with the notice is unable to use any alternative (and equally satisfactory) method of complying with the terms of the notice. In other words, the notice must be sufficiently explicit to indicate clearly and without doubt, what the local authority require to be done, but must not be so specific that it only permits of the work being done in one way.

Care should be taken to allow adequate time for the work to be carried out and it must be noted that an appeal may be lodged against a notice on the ground that the time specified is not reasonably sufficient for the purpose (see *infra*).

In every case where a person upon whom a notice is served is entitled to appeal to a court, the notice must state the right of appeal and the time within which it may be brought (v) (see *post*, p. 64).

(b) **Authentication of notices, documents, etc.**—Documents issued by a local authority may be signed either by the clerk, surveyor, medical officer of health, sanitary inspector or chief financial officer, or by any officer specially authorised by the authority to sign any particular document. Section 284 of the Act of 1936, *post*, p. 62, prescribes the conditions under which these officers may sign documents and subsection (2) contains the important proviso that the expression “ signature ” includes a facsimile of a signature. This provision will be of considerable value, especially in the signing of large numbers of notices of minor importance, *e.g.*, for the provision of dustbins. At the same time, it is wise to use a facsimile signature with discretion, and care should be taken not to allow anyone to have access to it, otherwise there is a risk

(s) 13 Halsbury's Statutes 773.

(t) *Stourbridge U.D.C. v. Butler and Grove*, [1909] 1 Ch. 87 ; 26 Digest 525, 2252.

(u) Sect. 290(2) Public Health Act, 1936 ; 29 Halsbury's Statutes 509.

(v) *Ibid*, sect. 300(3), *post*, p. 67.

that it may be used for unauthorised purposes. In all cases, a signature stamp should be kept under lock and key by the responsible officer.

Section 284, Public Health Act, 1936.—Authentication of documents.

- (1) Any notice, order, consent, demand or other document which a council are authorised or required by or under this Act to give, make or issue may be signed on behalf of the council—
 - (a) by the clerk of the council ;
 - (b) by the surveyor, the medical officer of health, the sanitary inspector or the chief financial officer, of the council as respects documents relating to matters within their respective provinces ;
 - (c) by any officer of the council authorised by them in writing to sign documents of the particular kind or, as the case may be, the particular document.
- (2) Any document purporting to bear the signature of an officer expressed to hold an office by virtue of which he is under this section empowered to sign such a document, or expressed to be duly authorised by the council to sign such a document or the particular document, shall for the purposes of this Act, and of any byelaws and orders made thereunder, be deemed, until the contrary is proved, to have been duly given, made or issued by authority of the council.

In this subsection the expression "signature" includes a facsimile of a signature by whatever process reproduced.

The matters coming within the respective provinces of the several officers detailed in paragraph (b), *supra*, are not prescribed, but a summary is given in chapter 3 (see *ante*, p. 50) of the duties usually carried out by the sanitary inspector. It was held that a notice demanding payment of expenses incurred by a local authority under section 36, Public Health Act, 1875(x), was sufficiently authenticated by the signature of the rating surveyor, it being part of his duties to prepare, sign and serve all notices demanding payment of money due to the local authority(y).

(c) **Service of notices.**—The service of notices is a matter of considerable importance, and particular attention should be paid to the provisions of section 285 of the Act of 1936, *infra*, which sets out the various ways in which a notice may be validly served.

Section 285, Public Health Act, 1936.—Service of notices, etc.

Any notice, order, consent, demand or other document which is required or authorised by or under this Act to be given to or

(x) 13 Halsbury's Statutes 640.

(y) *Willie v Rotherham Corp.* (1911). 105 L.T. 436 : 38 Digest 230, 605.

served on any person may, in any case for which no other provision is made by this Act, be given or served either—

- (a) by delivering it to that person ; or
- (b) in the case of a coroner, or a medical officer of health, by leaving it or sending it in a prepaid letter addressed to him, at either his residence or his office and, in the case of any other officer of a council, by leaving it or sending it in a prepaid letter addressed to him, at his office ; or
- (c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to him, at his usual or last known residence ; or
- (d) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office ; or
- (e) in the case of a document to be given to or served on a person as being the owner of any premises by virtue of the fact that he receives the rackrent thereof as agent for another, or would so receive it if the premises were let at a rackrent, by leaving it, or sending it in a prepaid letter addressed to him, at his place of business ; or
- (f) in the case of a document to be given to or served on the owner or the occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or if the premises are unoccupied, by addressing it to the person concerned by the description of "owner" or "occupier" of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

It will be observed that with the exception of the coroner and the medical officer of health, notices to be served upon any officer of a local authority must be left at his office. Owing to the fact that there are still many part-time coroners and medical officers of health, with no proper offices, notices may be served upon them at their place of residence.

Section 286 of the Local Government Act, 1933, *infra*, prescribes the method of service of notices upon local authorities and it will be seen that they must be sent to the clerk or chairman of the authority. It should be noted however that this section only refers to the service of notices upon the local authority and does not affect notices which must be sent to particular officers of the authority (*e.g.* notification of infectious diseases, etc.).

Section 286, Local Government Act, 1933.—Service of notices on local authorities, etc.

- (1) Any notice, order or other document required or authorised by this Act, or by any enactment passed or statutory order made after the commencement of this Act, to be sent, delivered

or served to or upon a local authority or to or upon the clerk or chairman of a local authority, shall be addressed to the local authority or to the clerk or chairman, as the case may be, and left at, or sent by post in a prepaid letter to, the offices of the local authority.

- (2) In the case of documents required or authorised to be sent or delivered to, or served upon, a parish meeting, the document shall be left with, or sent by post in a prepaid letter to, the chairman of the parish meeting.

In order to obtain information as to the ownership of premises, a local authority are empowered by section 277 of the Act of 1936(z) to require the occupier of any premises, and any person who either directly or indirectly receives rent in respect of such premises, to state in writing the nature of his own interest in the property and the name and address of any other person known to him to have an interest therein, whether as freeholder, mortgagee, lessee or otherwise. Failure to supply the desired information renders the person concerned liable to a penalty not exceeding five pounds.

Under the repealed section 267 of the Public Health Act, 1875(a), it was held that the service of a summons was covered (b), so that it may be served in accordance with section 285, *supra*. Where, in accordance with paragraph (f) of section 285, *ante*, p. 63, it is necessary to affix a notice to premises, the question as to what is a "conspicuous" part of the premises is one of fact(c). Where a notice addressed to an owner or occupier of premises, was delivered to his clerk at his place of business, it was held to be properly served(d). In order to prove service of a notice, proof of posting and delivery is necessary(e), and in every case where legal notices or documents are issued by a local authority, they should be sent by prepaid registered post.

(d) **Appeals against notices.**—Subject to any express modifications specified in the section under which a particular notice is given, the provisions of section 290 of the Act of 1936 apply to any notice in relation to which the provisions of Part XII of the Act with respect to appeals against, and the enforcement of, notices requiring the execution of works, are to apply(f).

The notices subject to the appeal provisions in Part XII, *supra*, are detailed in Table IX.

(z) 29 Halsbury's Statutes 500.

(a) 13 Halsbury's Statutes 735.

(b) *R. v. Mead*, [1894] 2 Q.B. 124; 38 Digest 175, 179.

(c) *West Ham Corp'n. v. Thomas* (1908), 73 J.P. 65; 26 Digest 525, 2250.

(d) *Mason v. Bibby* (1864), 33 L.J.M.C. 105; 38 Digest 176, 182.

(e) *Walthamstow U.D.C. v. Henwood*, [1897] 1 Ch. 41; 38 Digest 171, 148.

(f) Sect. 290(1), Public Health Act, 1936; 29 Halsbury's Statutes 509.

TABLE IX

Appeals against notices requiring execution of work.

Section.	Appeals against notice requiring—	Reference to text.
25(3)	Building erected over sewer to be pulled down	113
39	Adequate drainage for buildings	128
40	Rainwater pipe not to be used for conveyance of soil or drainage from sanitary convenience	131
44	Provision of, or reconstruction of closets	141
45	Repair of defective closet accommodation	143
46	Provision of sanitary conveniences at workplaces	331
47	Conversion of closet accommodation	144
50	Repair, etc., of overflowing or leaking cesspool	136
56	Paving of yards and passages	131
59	Provision of proper means of ingress and egress to certain buildings	—
60	Provision of means of escape in case of fire from certain high buildings	—
88	Removal of sanitary conveniences opening on to street	153
264	Repair and cleansing of culverts	300

Subsection (3) of section 290 of the Act of 1936, *infra*, sets out the grounds upon which a person may appeal against a notice served by a local authority under any of the above provisions.

Section 290(3), Public Health Act, 1936.—Provisions as to appeals against, and the enforcement of, notices requiring execution of works.

(3) A person served with such a notice as aforesaid may appeal to a court of summary jurisdiction on any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice or requirement is not justified by the terms of the section under which it purports to have been given or made;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the authority have refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;
- (f) where the work is work for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expenses of executing any works required.

With regard to paragraph (b), *supra*, subsection (4) of section 290(ff) provides that where an appeal is based on the ground of some informality, defect or error in or in connection with the notice, the court must dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

Where an appeal is lodged under paragraphs (e) or (f), *supra*, the provisions of subsection (5), *infra*, apply.

Section 290(5), Public Health Act, 1936.—Provisions as to appeals against, and the enforcement of, notices requiring execution of works.

- (5) Where the grounds upon which an appeal under this section is brought include a ground specified in paragraph (e) or paragraph (f) of subsection (3) of this section, the appellant shall serve a copy of his notice of appeal on each other person referred to, and in the case of any appeal under this section may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal the court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any other person towards the cost of the work, or as to the proportions in which any expenses which may become recoverable by the local authority are to be borne by the appellant and such other person.

In exercising its powers under this subsection, the court shall have regard—

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required; and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

An appeal against a notice served by a local authority must be by way of complaint for an order and the Summary Jurisdiction Acts apply to the proceedings. An appeal must be brought within twenty-one days from the date of the service of the notice, and the making of the complaint is deemed to be the bringing of the appeal(g) (see *post*, p. 67).

If a person is aggrieved by an order, determination or other decision of a court of summary jurisdiction, he may appeal to quarter sessions(h) (see *post*, p. 67).

Section 302 of the Act of 1936 (see *post*, p. 68) provides that where upon an appeal a court varies or reverses any decision of a local authority, it is the duty of the authority to give effect to the order of the court.

If an owner fails to exercise his right of appeal under section 290, *supra*, he cannot raise any question respecting the notice when the local authority proceed against him for

(ff) 29 Halsbury's Statutes 510.

(g) *Ibid*, sect. 300. *post*, p. 67.

(h) *Ibid*, sect. 301, *post*, p. 68.

the recovery of any expenses incurred by them in carrying out the work required by the notice(i).

(e) **Enforcement of notices.**—If a person fails to carry out the works specified on a notice within the time stated therein, the local authority may, subject to the right of appeal detailed above, themselves execute the work and recover from the person upon whom the notice was served, the expenses reasonably incurred by them in so doing. Without prejudice to the right of a local authority to carry out work in default, any person who fails to comply with a notice is liable to a penalty not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the default continues after conviction therefor(j).

APPEALS TO COURT OF SUMMARY JURISDICTION.

Section 300 of the Act of 1936, *infra*, prescribes the rules governing appeals to a court of summary jurisdiction, and it will be observed that the right of appeal must be stated on every document in respect of which an appeal may be lodged, and the appeal must be brought within a period of twenty-one days from the date of service of the notice, etc.

Section 300, Public Health Act, 1936.—Appeals and applications to courts of summary jurisdiction.

(1) Where any enactment in this Act provides—

- (a) for an appeal to a court of summary jurisdiction against a requirement, refusal or other decision of a council; or
- (b) for any matter to be determined by, or an application in respect of any matter to be made to, a court of summary jurisdiction,

the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings.

- (2) The time within which any such appeal may be brought shall be twenty-one days from the date on which notice of the council's requirement, refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.
- (3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the council in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought.

A court of summary jurisdiction is defined as any justice or justices of the peace, or other magistrate, to whom jurisdiction is given by, or who is authorised to act under, the Summary

(i) *Ibid*, sect. 290(7); 29 Halsbury's Statutes 510.

(j) *Ibid*, sect. 290(6); 29 Halsbury's Statutes 510.

Jurisdiction Acts, and whether acting under these statutes or any other Act, or by virtue of his commission or under the common law(*k*).

APPEALS TO QUARTER SESSIONS.

Where an appeal to a court of summary jurisdiction has been determined, a person aggrieved by the decision of such a court may appeal to quarter sessions in accordance with section 301.

Section 301, Public Health Act, 1936.—Appeals to quarter sessions against decision of justices.

Subject as hereinafter provided, where a person aggrieved by any order, determination or other decision of a court of summary jurisdiction under this Act is not by any other enactment authorised to appeal to a court of quarter sessions, he may appeal to such a court:

Provided that nothing in this section shall be construed as conferring a right of appeal from the decision of a court of summary jurisdiction in any case if each of the parties concerned might under this Act have required that the dispute should be determined by arbitration instead of by such a court.

Except in the case of the County of London, appeals to quarter sessions of a county are now heard by a special tribunal called the appeal committee. It is a committee of justices which is deemed to be a standing committee of the quarter sessions. The quarter sessions will determine the mode of appointment, the number, and subject to any statutory provisions, the procedure of the committee. The committee act by a court comprising not less than three or more than twelve of its members. The Clerk of the Peace is the clerk to the committee.

Section 302 of the Act of 1936(*l*) provides that a local authority must give effect to the findings of a court and if directed by the court to do so, the local authority must grant or issue any necessary consent, certificate or other document and to make any necessary entry in any register.

ARBITRATIONS.

In certain cases of dispute(*m*) under the Act of 1936, provision is made for the matter to be dealt with by arbitration and section 303 of the Act(*l*) provides that unless otherwise stated, a single arbitrator must be appointed by agreement between the parties or, in default of agreement, by the Minister of Health.

(*k*) Interpretation Act, 1889, sect. 13; 18 Halsbury's Statutes 997.

(*l*) 29 Halsbury's Statutes 516.

(*m*) As to compensation, unless the amount involved is less than £50, in which case it may be determined summarily (sect. 278, Public Health Act, 1936; 29 Halsbury's Statutes 500).

LEGAL PROCEEDINGS.

(a) **Offences under the Public Health Act, 1936.**—All offences under the Act of 1936 may be prosecuted under the Summary Jurisdiction Acts⁽ⁿ⁾. Local authorities are empowered by section 276 of the Local Government Act, 1933^(o), where they deem it expedient for the promotion or protection of the interests of the inhabitants of their area, to prosecute or defend any legal proceedings. In any proceedings instituted by or against a local authority it is not necessary to prove the corporate name of the authority or the constitution or limits of their area but a defendant is not precluded from availing himself of any objection which he might have taken or availed himself of if the Local Government Act, 1933, had not been passed^(p).

Section 277 of the Local Government Act, 1933, *infra*, enables a local authority to authorise a member or officer to institute legal proceedings on their behalf, either generally or in respect of any particular matter. It should be noted that such member or officer may institute or defend proceedings before the court, notwithstanding the provisions of the Solicitors' Act, 1932^(q).

Section 277, Local Government Act, 1933—Appearance of local authorities in legal proceedings.

A local authority may by resolution authorise any member or officer of the authority, either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction or to appear on their behalf before a court of summary jurisdiction in any proceedings instituted by them or on their behalf or against them, and any member or officer so authorised shall be entitled to institute or defend any such proceedings and, notwithstanding anything contained in the Solicitors' Act, 1932, to conduct any such proceedings although he is not a certificated solicitor.

No officer, not even the clerk of the council, can institute legal proceedings without being authorised to do so by the local authority, but a general authority may, by resolution, be given empowering the officer to institute proceedings for any offence under a particular Act or Acts specified in the resolution.

It has been held that the expression "officer" does not include a police officer^(r). It was held under the repealed

(n) *Ibid*, sect. 296 ; 29 Halsbury's Statutes 514.

(o) 26 Halsbury's Statutes 452.

(p) Sect. 278, Local Government Act, 1933 ; 26 Halsbury's Statutes 453.

(q) 25 Halsbury's Statutes 794.

(r) *Kyle v. Barber* (1888) 58 L.T. 229 ; 38 Digest 168, 128.

section 259 of the Public Health Act, 1875(s), that the institution of proceedings commenced with the laying of the information(t) and the officer must be properly authorised prior to the proceedings being instituted(u).

Proceedings in respect of offences created by or under the Act of 1936, can only be taken, without the written consent of the Attorney-General, by any person aggrieved, or a council or body whose function it is to enforce the provisions of the Act or Byelaw : see section 298 of the Act(x).

(b) **Recovery of daily penalty.**—Section 297 of the Act of 1936(x) enables the court to fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court, and in such circumstances, a daily penalty is not recoverable until the expiration of such period, notwithstanding words to the contrary which usually appear in the sections imposing penalties which occur throughout the Act.

(c) **General note as to legal proceedings.**—The power to institute legal proceedings is a necessary adjunct to the statutory requirements of the law relating to sanitary administration, but it should be the aim of local authorities and their officers to avoid litigation except as a last resort. The fact that the statute provides for the recovery of a penalty upon the contravention of certain legal requirements, is not, *ipso facto*, always sufficient cause for the institution of proceedings. It must be remembered that the object of all social legislation is the improvement in the standard of living of the people, and in order that such legislation should be most effective, it is imperative that those sections of the public who are directly concerned with the operation of the statutes should be convinced, at least to some extent, of the necessity for its existence. It is a simple matter to take proceedings in court. Every sanitary officer meets contraventions of the law, almost daily. The modern sanitary officer however should act, not so much as a sanitary policeman but rather as a teacher of the principles of good sanitation and hygiene, and aim at securing compliance with statutory requirements by persuasive means. This involves the display of much tact and patience upon the part of the officer but the final results always justify such methods. Where legal proceed-

(s) 13 Halsbury's Statutes 734.

(t) *Thorpe v. Priestnall*, [1897] 1 Q.B. 159; 42 Digest 939, 117.

(u) *Bowyer, Philpot and Payne v. Miller*, [1919] 1 K.B. 419; 38 Digest 169, 131.

(x) 29 Halsbury's Statutes 514.

ings are taken for comparatively trivial offences, particularly where they occur for the first time, bad feeling is bound to be caused, with consequent harm to the work of the local authority. It must also be remembered, that whilst as a general rule, ignorance is no defence in law, ignorance may be a reasonable plea to make, and sanitary officers should not allow their expert knowledge of the statutes to blind them to the fact that the majority of other people have little if any knowledge of the subject.

Except in certain special cases, first offences against the Public Health Act should be dealt with by way of warning or the service of notice, and it is important to note that the Act of 1936 establishes a more uniform method of dealing with contraventions of the law than existed hitherto. Generally speaking, the local authority are required to serve a notice, either drawing attention to the contravention and/or requiring the execution of such works as may be necessary to deal with the matter satisfactorily. Only upon failure to comply with the requirements of the local authority, should further action be taken, and in such cases, the authority should always avail themselves of the right to execute work in default, if the statute enables them to do so, rather than taking proceedings in court. The interests of affected persons are properly safeguarded by the power of appeal to the court and if an aggrieved person fails to utilise that power, there is no reason why the local authority should not pursue the matter to its proper conclusion.

In spite of the importance of refraining from taking legal proceedings on every possible occasion, instances do arise where it is essential that such a course should be followed. Where it is decided to take a case before the courts, it is extremely important that everything should be done to secure a conviction. Proceedings of this kind should be looked upon as a means of indicating to the public in general, and to such class in particular as may be primarily affected by the matter in question, that the reasonable compliance with the law will be insisted upon by the local authority. Where care is taken only to institute proceedings on comparatively rare occasions, it is all the more important that the actions should be successful. To ensure a successful issue, attention to every detail is imperative.

To an administrative officer, the dismissal of a case upon technical grounds, is usually most irksome, but it must be remembered that English Law requires the most methodical compliance with procedure, and an officer is not entitled to

expect success with a case, where he has failed to carry out the rules prescribed by the statute. If this principle was neglected, abuse of the law would be bound to follow, and much of the value of the courts would be lost.

In preparing a case for legal proceedings therefore, it is essential that the sanitary officer should be certain that at every stage, the statutory requirements as regards procedure have been complied with. When an offence has been committed, it is necessary for the officer to make a full report of the details and submit it to his local authority, with or without a recommendation that proceedings be taken. Before recommending the institution of any legal proceedings, the sanitary officer should always consult the legal officer of the local authority, and secure his approval to the recommendation that proceedings be taken. It is most important that the officer whose duty it will be to have charge of the case in court should deal with it from the onset. Whilst section 277 of the Local Government Act, 1933 (see *ante*, p. 69) enables any officer of a local authority to prosecute proceedings on behalf of the authority, notwithstanding that he is not a solicitor, it is a most unwise proceeding to do so. Apart from the many questions of procedure which may arise, demanding the expert knowledge of the lawyer, it is wise on grounds of courtesy to employ a solicitor or counsel for the conduct of a case. This method of procedure has the added advantage of leaving the administrative or technical officer completely free to concentrate upon the actual details of the case. There must of course be complete co-operation between the legal and sanitary officers, as between solicitor and client, and where this occurs, there is no doubt that the best results obtain.

When a local authority decide to institute proceedings, the sanitary officer should prepare for the legal officer, a complete and concise statement of the facts of the case. This should take the form of an orderly statement of the steps taken leading up to the decision to take the matter before the court. The exact nature of the offence should be stated, together with the relevant sections of the statute concerned. Details of notices, correspondence, interviews, etc., should be given, with copies of all relevant documents, arranged in date order. Statements should also be prepared by every officer concerned with the case, who may be required to give evidence in support of the local authority, and these should be prepared in such a way as to form the basis of a statement of evidence, which will be prepared or approved by, the

legal officer. Having compiled a complete statement of the case and collected all the necessary documents, the sanitary officer must go through the whole matter in detail with the legal officer, whose duty it is to put the facts in proper sequence for presentation to court and to discover omissions, if any, in the particulars or documents likely to be required. At the same time, the solicitor will go through the evidence with each of the witnesses.

It is important that the witnesses for the local authority should consider the possible lines of argument which are likely to be put forward by the defence, so as to be in a position to deal with them during cross-examination. The sanitary officer should be prepared to deal with the question of alternative methods of dealing with the matter in dispute—a line of action frequently taken by the defence in proceedings taken in court. Where any such alternatives are reasonable ones, the officer should not hesitate to accept them.

When the case is called in court, the legal officer acting for the local authority (or the other officer of the authority if he is authorised to take the proceedings) will state the facts of the case and deal with the compliance with the legal formalities. Evidence will then be given by the various witnesses appearing for the authority, who will each in turn be cross-examined by the solicitor appearing for the defendant (if he wishes to do so). Such cross-examination will be designed to elucidate more clearly the points arising in evidence, and in general will be directed towards showing that the case for the local authority is not a sound or reasonable one and that the proposals of the defendant (if any) or his answer to the charge, is sound and valid, and should be accepted by the court. Finally, the witnesses may be re-examined by the legal officer of the local authority, when the questions must be confined to the points raised in the cross-examination. After the case for the local authority has concluded, the defence is pursued on similar lines, the solicitor making a statement on behalf of the defendant and calling witnesses to give evidence, and these may be cross-examined and re-examined. The solicitor acting for the defence may be allowed by the court to make his statement after his witnesses have given evidence and this method of procedure is frequently resorted to.

Witnesses should remember that all evidence is given on oath and no matter what the circumstances may be the absolute and complete truth must be given. Witnesses appearing on behalf of a local authority should not hesitate

to make statements in favour of the defence, absolute frankness and impartiality are greatly to be desired, and do much to convince the court that the local authority are prosecuting the case in the proper manner.

RECOVERY OF EXPENSES.

In cases where a local authority incur expenses which may be recovered from the owner of the premises, such expenses, together with interest, become a charge upon the property, in accordance with the provisions of section 291 of the Act of 1936, *infra*.

Section 291, Public Health Act, 1936.—Certain expenses recoverable from owners to be a charge on the premises : power to order payment by instalment.

- (1) Where a local authority have incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable, either under this Act or under any enactment repealed thereby, or by agreement with the authority, those expenses, together with interest from the date of service of a demand for the expenses, may be recovered by the authority from the person who is the owner of the premises at the date when the works are completed, or, if he has ceased to be the owner of the premises before the date when a demand for the expenses is served, either from him or from the person who is the owner at the date when the demand is served, and, as from the date of the completion of the works, the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein.
- (2) A local authority may by order declare any expenses recoverable by them under this section to be payable with interest by instalments within a period not exceeding thirty years, until the whole amount is paid ; and any such instalments and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, if recovered from the occupier, may be deducted by him from the rent of the premises :

Provided that an occupier shall not be required to pay at any one time any sum in excess of the amount which was due from him on account of rent at, or has become due from him on account of rent since, the date on which he received a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

An order may be made under this subsection at any time with respect to any unpaid balance of expenses and accrued interest so, however, that the period for repayment shall not in any case extend beyond thirty years from the service of the first demand for the expenses.

- (3) The rate of interest chargeable under subsection (1) or subsection (2) of this section shall be such rate as the authority may determine :

Provided that the Minister may from time to time by order fix a maximum rate of interest for the purposes of this section generally, or different maximum rates for different purposes and in different cases.

- (4) A local authority shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the Law of Property Act, 1925, and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

It should be noted that the local authority may accept payment of the expenses by instalments spread over a period not exceeding thirty years, and any such instalments, together with interest, may be collected from the owner or the occupier. In the latter case, the occupier may deduct the amount from the rent.

A local authority are empowered by section 292 of the Act of 1936, in any case where they have executed works the cost of which may be recovered from the owner, to add to such expenses an additional sum not exceeding five per cent. of the total cost of the works, by way of establishment charges.

Upon a claim for the recovery of expenses from a person reputed to be the owner of premises and such person proves that he—

- (a) is receiving the rent of those premises merely as agent or trustee for some other person ; and
- (b) has not, and since the date of the service on him of a demand for payment, has not had in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability is limited to the total amount of money he has or has had in his hands since that date. The local authority are entitled to recover the balance outstanding from the actual owner of the property (section 294 of the Act(z)).

Section 295 of the Act of 1936 enables a local authority to make a charging order in respect of premises where works have been carried out under the Act. The annuity charged, must be payable by equal half-yearly instalments, for a term of thirty years, and the rate of interest may be fixed by the local authority, but the Minister of Health may fix the amount by order.

Where a local authority are entitled to recover any expenses incurred under the Act of 1936, and the method of recovery is not covered by any of the preceding provisions, they may recover the sum either summarily as a civil debt or as a simple

contract debt in any court of competent jurisdiction. The time for the recovery of expenses, except where otherwise stated by the Act, must be reckoned from the date of the service of the demand for payment(a).

CROWN PROPERTY.

Unless specially mentioned in an Act of Parliament, Crown property is exempt from the operation of all statutes, and it has been held that this exemption extends to all property used for the purposes of, and occupied by the servants of, the Crown, and to all property occupied for the purposes of the State(b).

The provisions of section 341 of the Act of 1936, *infra*, apply to Crown property, and it will be observed that a local authority and the appropriate Government department may make an agreement whereby certain provisions of the Act apply to such property.

Section 341, Public Health Act, 1936.—Power to apply provisions of Act to Crown property.

- (1) The provisions of this section shall apply in relation to any house, building or other premises being property belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a Government department, or held in trust for His Majesty for purposes of a Government department.
- (2) The authority which in relation to any such property is for the purposes of this section the appropriate authority and the council of the county, or the local authority of the district, in which that property is situate may agree that any provisions of this Act specified in the agreement shall apply to that property and, while the agreement is in force, those provisions shall apply to that property accordingly, subject however to the terms of the agreement.

Any such agreement as aforesaid may contain such consequential and incidental provisions, including, with the approval of the Treasury, provisions of a financial character, as appear to the appropriate authority to be necessary or equitable.

- (3) In this section the expression "appropriate authority" means—
 - (a) in the case of property belonging to His Majesty in right of the Crown, the Commissioners of Crown Lands or other Government department having the management of the property in question;
 - (b) in the case of property belonging to His Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
 - (c) in the case of property belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor

(a) *Ibid*, sect. 293; 29 Halsbury's Statutes 512.

(b) *Mersey Docks v. Cameron, Jones v. Mersey Docks* (1865), 11 H.L. Cas. 443; 38 Digest 466, 286.

for the time being of the Duchy of Cornwall, appoints ; and

- (d) in the case of property belonging to a Government department or held in trust for His Majesty for purposes of a Government department, that department ;

and, if any question arises as to what authority is the appropriate authority in relation to any property, that question shall be referred to the Treasury, whose decision shall be final.

It was held that Crown property, used for purposes of the Crown by servants of the Crown, cannot be controlled by the local authority, and in particular that such property was not subject to the provisions of the building byelaws made under the provisions of the Public Health Act, 1875(c).

Where a local authority are satisfied that a smoke nuisance occurs on premises used by the Crown, they may take action in accordance with section 106 of the Act of 1936(d), and report the matter to the appropriate Government Department.

The Factories Act, 1937, applies to factories belonging to or in the occupation of the Crown, and to building operations and works of engineering construction undertaken by or on behalf of the Crown, with the proviso that in case of any public emergency, the Secretary of State(e) may, by order, exempt from the operation of the Act any factory belonging to the Crown, or any building operations or works of engineering construction undertaken by or on behalf of the Crown, or any factory in respect of which work is being done on behalf of the Crown(f). In the case of factories belonging to or in the occupation of the Crown, the powers and duties of district councils must be exercised by the factory inspector, local authorities having no powers with regard to such premises(g).

PROPERTY BELONGING TO STATUTORY UNDERTAKERS.

(a) **Docks and railways.**—Works belonging to dock undertakers or to railway companies are protected by the provisions of section 333 of the Act of 1936, *infra*.

Section 333, Public Health Act, 1936.—Protection for works of dock undertakers and for railways.

- (1) Subject to the provisions of this section, nothing in this Act shall authorise a local authority without the consent of the dock undertakers concerned—

- (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation there-

(c) *Gorton Local Board v. Prison Commissioners* (1887), reported in [1904] 2 K.B. 165, n ; 42 Digest 690, 1050.

(d) 29 Halsbury's Statutes 402 ; and see *post*, p. 278.

(e) Now the Minister of Labour and National Service.

(f) Sect. 150(1), Factories Act, 1937 ; 30 Halsbury's Statutes 295.

(g) *Ibid*, sect. 150(2) ; 30 Halsbury's Statutes 295 ; and see *post*, p. 312.

on or the use thereof or the access thereto, or to interfere with any towing path, so as to interrupt the traffic thereon;

- (b) to interfere with any bridges crossing any river, canal, dock, harbour or basin;
- (c) to execute any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to dock undertakers and is held or used by them for the purposes of their undertaking;
- (d) to execute any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir, or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof;

or without the consent of the railway company concerned, to execute any works along, across or under any railway of a railway company:

Provided that consent under this section shall not be unreasonably withheld, and if any question arises as to whether or not consent is unreasonably withheld, either party may require that it shall be referred to an arbitrator to be appointed, in default of agreement, by the President of the Institution of Civil Engineers.

- (2) Upon an arbitration under this section, the arbitrator shall determine—

- (i) whether any works which the local authority propose to execute are such works as under the last preceding subsection they are not entitled to execute without the consent of the statutory undertakers; and
- (ii) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and
- (iii) if the works are of such a nature, the conditions subject to which the local authority may execute the works, including the amount of the compensation, if any, to be paid by them to the undertakers.

If the arbitrator should determine that the proposed works are such works as the local authority are not entitled to execute without the consent of the undertakers and that the works would cause injury to the undertakers of such a nature as not to admit of being fully compensated by money, the local authority shall not proceed to execute the works, but in any other case they may execute the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.

- (3) For the purposes of this section, dock undertakers shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if it belongs to them and forms part of their undertaking, or if they have statutory rights of navigating on or using it, or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (4) In this section shall be construed as limiting the powers of a local authority under any of the foregoing provisions of this Act in respect of the opening and breaking up of streets and bridges for the purposes of constructing, laying and maintaining sewers, drains and pipes.

(b) **Land drainage authorities.**—A local authority are not empowered to use, injure, or interfere with any sluices, flood-gates, sewers, groynes, sea defences, or other works, which are vested in or under the control of a land drainage authority, or are used by any person for draining, preserving, or improving land under any local or private Act, or for irrigating land, without the consent of that authority or person. Such consent must not be unreasonably withheld, and in case of dispute the matter may be referred to arbitration(*h*).

(c) **London County Council.**—Nothing in the Act of 1936 affects any outfall or other works of the London County Council, or takes away, abridges, or prejudicially affects any right, power, authority, jurisdiction or privilege of that Council(*i*).

(d) **Middlesex County Council.**—Section 336 of the Act of 1936, protects any main sewer or sewage disposal works of the Middlesex County Council, constructed under the Middlesex County Council Act, 1931.

LAND CHARGES ACT.

The Land Charges Act, 1925(*h*), requires the clerk of every local authority to keep a Local Land Charges Register, divided into four parts—

Part I—General charges under section 15 (4). These occur as a result of money expended by a local authority on the land of a private owner, but until the work is completed the exact amount of the charge cannot be ascertained. In the meantime a general charge is incurred, which is cancelled immediately the exact amount is known, when a specific charge is registered in its place. When registered, the specific charge has priority as from the date of registration of the general charge;

Part II—Specific charges other than prohibitions of or restrictions on the user or mode of user of land or buildings, being charges acquired by the authority under some public, local or private Act;

Part III—Prohibitions or restrictions on the user or mode of user of land or buildings which are town-planning charges, known as "planning charges"; and

Part IV—Prohibitions or restrictions on the user or mode of user of land or buildings which are not town-planning charges known as "non-planning charges." Conditions attached to dwellings under section 3 of the Housing (Rural Workers) Act, 1926(*l*), are non-planning charges(*m*).

(*h*) Sect. 334, Public Health Act, 1936; 29 Halsbury's Statutes 553.

(*i*) *Ibid.*, sect. 335; 29 Halsbury's Statutes 553.

(*h*) 15 Halsbury's Statutes 524.

(*l*) 13 Halsbury's Statutes 1167.

(*m*) See the author's "Housing Administration." 2nd Edn. 1928 p. 225

The Act of 1925, together with the Local Land Charges Rules, 1934(*n*), as amended by the Local Land Charges (Amendment) Rules, 1938(*o*), and the Local Land Charges (Amendment No. 2) Rules, 1938(*p*), prescribe the methods of keeping the land charges register, and provide that the clerk of the local authority must act as the registrar of local land charges.

Entries in Part I of the Register must contain—

- (1) A reference to the statute, and, where in the opinion of the local registrar expedient, to the section, order, scheme, instrument, or resolution, under which the charge is proposed to be acquired;
- (2) A sufficient description, by reference to a plan or otherwise, of the land which will be affected by such charge; and
- (3) The date of registration of the general charge.

Every entry in Part II of the Register must contain—

- (1) A reference to the statute, and, where in the opinion of the local registrar expedient, to the section, order, scheme, instrument or resolution, under which the charge is acquired;
- (2) A sufficient description, by reference to a plan or otherwise, of the land which is affected by the charge;
- (3) The date of the charge;
- (4) The date of registration of the charge; and
- (5) The amount of the charge or, where interest is payable, the amount of the original charge and the rate of interest thereon.

Entries in Part III of the Register are confined to planning charges and as such are not the concern of the sanitary officer.

Every entry in Part IV of the Register must contain—

- (1) A reference to the document (i.e. order, instrument, resolution, covenant, agreement or other document) under which the prohibition or restriction is created;
- (2) The statute under which the document derives its force;
- (3) Particulars of the place where the document, or a certified copy thereof, may be inspected;
- (4) A sufficient description of the land affected by the prohibition or restriction; and
- (5) The date of the registration of the charge.

Where a general charge has been registered under Part I of the Register, it must be cancelled as soon as a specific charge has been made, or in any case at the expiration of fifteen months from the date on which the general charge is ascertained. Where a specific charge has been reduced by the payment of an instalment of the amount due, the appropriate entry must be made in the register showing the amount of the instalment and the balance still outstanding.

(*n*) S.R. and O., 1934, No. 285; 27 Halsbury's Statutes 465.

(*o*) S.R. and O., 1938, No. 499/L. 8.

(*p*) S.R. and O., 1938, No. 592/L. 12.

The various forms to be used in entering charges in the land register have been prescribed in the Schedule to the Order of 1934.

Any person is entitled to make a personal search in the land register on payment of the prescribed fee(*q*), and an official certificate of search must be issued by the registrar upon receipt of a requisition from any person together with the fee(*r*).

Section 291 of the Act of 1936 (see *ante*, p. 74), which deals with the recovery of expenses incurred by a local authority in carrying out their powers under that Act, provides that such expenses, together with interest at such rate as the authority determine, shall become a charge on the premises and on all estates and interests therein. Where, therefore, a notice is served by a local authority requiring the execution of works which if the notice is not complied with, the authority may carry out the works themselves and recover the costs in accordance with section 291, *ante*, p. 74, the details of such notice should be registered in Part I of the Land Charges Register as a general charge. When the work has been done by the local authority acting upon the default of the person upon whom the notice was served, the costs incurred should be registered in Part II of the register, as a specific charge. Where such expenses are recoverable by instalments, the specific charge must be adjusted every time an instalment is paid.

It is most important that all charges on land should be registered immediately they are incurred because failure to do so prevents the enforcement of the charge against a purchaser of the land affected by the charge(*s*).

Section 329 of the Act of 1936(*t*), provides that nothing in that Act with respect to the recovery of expenses from owners and occupiers, shall affect the provisions of the Land Charges Act, 1925 (as amended) with respect to local land charges.

COMPENSATION FOR DAMAGE DONE BY LOCAL AUTHORITY.

A local authority must pay full compensation to any person who sustains damage by reason of the exercise of any of the powers of the Act of 1936, in accordance with section 278, *infra*, unless he is himself in default.

(*q*) Sect. 16, Land Charges Act, 1925; 15 Halsbury's Statutes 540.

(*r*) *Ibid.*, sect. 17; 15 Halsbury's Statutes 540.

(*s*) Sect. 4(2), Law of Property (Amendment) Act, 1926; 15 Halsbury's Statutes 548.

(*t*) 29 Halsbury's Statutes 530.

Section 278, Public Health Act, 1936.—Compensation to individuals for damage resulting from exercise of powers under Act.

- (1) Subject to the provisions of this section, a local authority shall make full compensation to any person who has sustained damage by reason of the exercise by the authority of any of their powers under this Act in relation to a matter as to which he has not himself been in default.
- (2) Any dispute arising under this section as to the fact of damage, or as to the amount of compensation, shall be determined by arbitration :

Provided that, if the compensation claimed does not exceed fifty pounds, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may on the application of either party be determined by, and any compensation awarded may be recovered before, a court of summary jurisdiction.

- (3) No person shall be entitled by virtue of this section to claim compensation on the ground that a local authority have in the exercise of their powers under this Act declared any sewer or sewage disposal works, whether belonging to him or not, to be vested in them, or on the ground that he has sustained damage by reason of any action of a local authority in respect of which the authority are by this Act authorised to pay compensation if they think fit.
- (4) Where an owner of land claims compensation in respect of damage sustained by reason of a local authority having, in the exercise of their powers under this Act, constructed a sewer or laid a water main in, on or over his land, the tribunal determining the amount of the compensation shall determine also by what amount, if any, the value to the claimant of any land belonging to him has been enhanced by the construction of the sewer or the laying of the water main, and the local authority shall be entitled to set off that amount against the amount of any compensation awarded.

The powers contained in this section enable action to be taken by any person who sustains damage as a result of the operation of the Act of 1936, provided that the damage in respect of which complaint is made must be such that action could have been taken if the statute had not authorised the local authority to carry out the particular act resulting in the damage^(u). This section does not entitle a person to claim compensation from an authority arising from the negligent performance of a duty imposed upon them by the Public Health Act, the aggrieved person must bring an action for recovery of damages^(x).

It will be observed that full compensation must be paid by the local authority but it has been held that the additional costs properly incurred above the taxed costs in successful

^(u) *Ricket v. Metropolitan Rail. Co.* (1867), L.R.2 H.L. 175 ; 11 Digest 140, 265.

^(x) *Clothier v. Webster* (1862), 6 L.T. 461 ; 38 Digest 41, 241.

proceedings against a local authority under the Public Health Act, 1875, cannot be recovered as compensation(y). Compensation is payable only if the person concerned is himself not in default, and it was held in a case of unsound meat, where a portion was unsound but could not have been discovered by reasonable examination, that the plaintiff was nevertheless in default and not entitled to compensation(z). Where a local authority in pursuance of a notice served upon the owner of a house, carried out sanitary work but included work not specified on the notice, it was held that the owner was not in default in respect of the extra work, for which he claimed compensation from the authority(a).

In addition to the general powers relating to compensation contained in section 278, *supra*, subsection (4) of section 167 of the Act of 1936 (see *post*, p. 478) contains special powers relating to the payment of compensation arising from the disinfection or destruction of infected articles.

In connection with the question of compensation, it should be remembered that section 265 of the Public Health Act, 1875(b), protects a local authority and their officers from personal liability in respect of any bona fide action taken under that Act, and section 305 of the Act of 1936(c), applies the provisions of section 265, *supra*, to that Act.

APPLICATION OF PUBLIC HEALTH ACT, 1936, TO SHIPS.

Certain provisions of the Act of 1936 apply to ships and boats, in accordance with section 267, *infra*.

Section 267, Public Health Act, 1936.—Application to ships and boats of certain provisions of Act.

- (1) For the purposes of such of the provisions of this Act specified in subsection (4) of this section as are provisions for the execution of which local authorities are responsible, a vessel lying in any inland or coastal waters shall—

- (a) if those waters are within a port health district, be subject to the jurisdiction of the port health authority for that district;
- (b) if those waters are within the district of a local authority but not within a port health district, be subject to the jurisdiction of that local authority;
- (c) if those waters are not within the district of any local authority or any port health district, be subject to the

(y) *Barnett v. Eccles Corp.*, [1900] 2 Q.B. 423; 33 Digest 14, 44.

(z) *Hobbs v. Winchester Corp.*, [1910] 2 K.B. 471; 25 Digest 111, 351.

(a) *Place v. Rawtenstall Corp.* (1916), 80 J.P. 433; 38 Digest 230, 604.

(b) 13 Halsbury's Statutes 734.

(c) 29 Halsbury's Statutes 516.

jurisdiction of such local authority as the Minister may from time to time by order direct or, if no such direction is given, within the jurisdiction of the local authority whose district includes that point on land which is nearest to the spot where the vessel is lying.

- (2) For the purposes of such of the said provisions as are provisions for the execution of which county councils are responsible, a vessel when lying in any inland or coastal waters not within a county shall be subject to the jurisdiction of the council of the county which includes that point of land which is nearest to the spot where the vessel is lying.
- (3) In relation to any vessel the said provisions shall have effect as if—
 - (a) the vessel were a house, building or premises within the district, or, as the case may be, the county, of the local authority or county council to whose jurisdiction it is subject; and
 - (b) the master, or other officer or person in charge, of the vessel were the occupier.
- (4) The provisions of this Act referred to in the preceding subsections are Parts III, V, VI, and XII and, so far as regards boats used for human habitation, the provisions of Part II relating to filthy or verminous premises or articles and verminous persons:

Provided that the provisions of the said Part III with regard to smoke nuisances shall not apply in relation to any vessel habitually used as a sea-going vessel, except that a funnel of, or chimney on, any such ship sending forth black smoke in such quantity as to be a nuisance shall be a statutory nuisance.

- (5) This section does not apply to any vessel belonging to His Majesty or under the command or charge of an officer holding His Majesty's commission, or to any vessel belonging to a foreign government.

The provisions referred to in subsection (4), *supra*, are as follows:—

Part III—*Nuisances*—see chapter 9, *post*, p. 216 *et seq.*

Part V—*Prevention, notification and treatment of disease*—see chapters 19 and 20, *post*, p. 417 *et seq.*

Part VI—*Hospitals, and nursing homes, etc.*

Part XII—*General provisions.*

Part II—sections 83 to 86 only—*Filthy and verminous premises, articles and persons*—see chapter 20, *post*, p. 484.

RESOLUTIONS OF LOCAL AUTHORITIES.

Where any proceedings are taken under the Act of 1936, a document purported to be certified by the clerk of a council as a copy of a resolution or order passed or made by the council on a specified date, or of the appointment of, or of any authority given to, an officer of that council, is evidence

that that resolution, order, appointment or authority was duly passed, made, or given by the council on the said date(d).

DISPLAY OF PUBLIC NOTICES BY LOCAL AUTHORITY.

Where a local authority are required to display a public notice, it may be—

- (a) affixed to the offices of the local authority or, in the case of a parish council, on or near the principal door of each church or chapel in the parish; and
- (b) posted in some conspicuous place or places within the area of the local authority; and
- (c) displayed in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice(e).

A notice or other document required to be affixed to the offices of a local authority or to a town hall, must be exhibited in some conspicuous place on or near to the outer door of the offices of the authority or the town hall, or, if the authority have no offices, or there is no town hall, in some conspicuous place in the area of the local authority, or in the area to which the notice or document relates(f). A penalty is imposed upon any person who destroys, pulls down, injures or tampers with, a public notice(g).

(d) Sect. 286, Public Health Act, 1936; 29 Halsbury's Statutes 507.

(e) Sect. 287, Local Government Act, 1933; 26 Halsbury's Statutes 458.

(f) *Ibid*, sect. 288; 26 Halsbury's Statutes 458.

(g) *Ibid*, sect. 289; 26 Halsbury's Statutes 458.

PART II

GENERAL SANITATION.

CHAPTER 5—SEWERAGE AND DRAINAGE.

The provision of a proper system of sewers for the conveyance of sewage to purification works, is a matter of considerable importance to local authorities, and they have extensive powers in the Public Health Act, 1936—Part II—to enable them to carry out the work satisfactorily. In addition, local authorities are empowered to require the drainage of houses to public sewers and generally to secure that adequate steps are taken to prevent nuisance or danger to health arising as a result of inefficient sewerage and drainage arrangements, or inadequate treatment of sewage.

DEFINITIONS.

Section 90(1) of the Act of 1936(a) defines, *inter alia*, the following terms relative to sewerage and drainage, *viz.*:—

- "cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings;
- "closet" includes privy; (see chapter 6, *post*, p. 139)
- "earthcloset" means a closet having a moveable receptacle for the reception of faecal matter and its deodorisation by the use of earth, ashes or chemicals, or by other methods; (see chapter 6, *post* p. 139)
- "sanitary conveniences" means closets and urinals; (see chapter 6, *post*, p. 139)
- "surface water" includes water from roofs;
- "sewerage authority" means a local authority, the council of a metropolitan borough, a county council (including the London County Council) and a joint sewerage board;
- "watercloset" means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action; (see chapter 6, *post*, p. 139)

Subsection (4) of section 90, *supra*, extends the meaning of "drain" or "sewer" to include a reference to any man-holes, ventilating shafts, pumps, or other accessories belonging to the drain or sewer, and any reference to sewage disposal

works includes a reference to the machinery and equipment of the works and any necessary pumping stations and outfall pipes.

The following definitions are contained in section 343 of the Act of 1936(*b*)—

“drain” means a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

“sewer” does not include a drain as defined above but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings;

“private sewer” means a sewer which is not a public sewer;

“public sewer” has the meaning assigned to it in section twenty of the Act of 1936 (see *post*, p. 104);

Considerable difficulty has occurred in the past in deciding whether a particular line of pipes is a “drain” or a “sewer” and many cases have been before the courts. In fact, it is probably true to say that no other matter affecting sanitary administration has been responsible for so much litigation, with results so confusing and difficult to apply. Prior to the Act of 1936, the question was governed by the definitions of “drain” and “sewer” contained in section 4 of the Public Health Act, 1875(*c*), and section 19 of the Public Health Acts Amendment Act, 1890(*d*), which applied only where action was taken under section 41 of the Act of 1875(*e*). Whilst the Act of 1875 was of general application, the 1890 Act was adoptive, so that the procedure varied in different districts according as to whether section 19, *supra*, had or had not been adopted. In a number of districts, an attempt had been made to clarify the position by the inclusion in local Acts of a section designed to overcome the difficulties connected with the sections in the general law. The net result of these varying provisions, was an absence of any uniform procedure and the whole position was extremely unsatisfactory.

It has been held that the expression “one building” may include two semi-detached houses belonging to the same owner and built on one piece of land(*f*), but each case must be considered on its merits and no general rule has been laid down(*g*).

There have been several cases regarding the question of curtilage, and it was held(*h*) that the decision must rest upon

(*b*) 29 Halsbury's Statutes 536.

(*c*) 13 Halsbury's Statutes 624.

(*d*) 13 Halsbury's Statutes 831.

(*e*) 13 Halsbury's Statutes 642.

(*f*) *Hedley v. Webb*, [1901] 2 Ch. 126; 41 Digest 3, 5.

(*g*) *Humphrey v. Young*, [1903] 1 K.B. 44; 41 Digest 3, 6.

(*h*) *Pilbrow v. St. Leonard, Shoreditch, Vestry*, [1895] 1 Q.B. 433; 41 Digest 11, 80.

considerations relating to the buildings, their planning and use. In this case, two blocks of buildings, separated by a causeway twenty feet wide, belonging to the same owner, containing forty-six separate flats, were drained by means of twelve branch drains connected to a main drain under the causeway, which communicated with a sewer less than one hundred feet from the buildings. The causeway opened into a public street, access to one block of flats was from the causeway and to the other only from the public street. It was held that the two blocks were premises within the same curtilage and that the main drain was a "drain" and not a "sewer." In another case⁽ⁱ⁾, an arcade consisting of twenty-five houses and shops, with a gate at each end and arched over by one roof, was drained by means of a main drain running down the centre of the arcade, with connections from each of the houses and shops. The court held that the main drain was a "sewer" and not a "drain," as the buildings were not premises within the same curtilage. In a further case^(l), there were eighteen houses grouped about an open court, access to which from the main thoroughfare was effected by means of two narrow passages between certain of the houses and also across a partially enclosed space of ground. The drainage from the sinks of each house was carried by a separate channel cut in the pavement at right angles to the houses and connected to a main channel at the side of the pavement in the court, and thence into two gullies, connected to the main sewer outside the court. It was held that the eighteen dwelling-houses were not premises within the same curtilage and it was stated in the judgment that, "There is no definition of a curtilage which would include the case of a number of houses separately occupied by different people, simply because there is a common access and to some extent common accommodation"^(m).

A drain must have a properly defined course⁽ⁿ⁾; hence a "dumb-well"^(o) is not a drain or watercourse within the meaning of section 67, Highway Act, 1835^(p), but the pipe leading into the dumb-well is itself a drain within that section^(q). A

(i) *St. Martins in the Field Vestry v. Bird*, [1895] 1 Q.B. 428; 41 Digest 11, 87.

(l) *Harris v. Scurfield* (1904), 68 J.P. 516; 41 Digest 3, 7.

(m) *Per Alverstone*, L.C.J.

(n) *Croft v. Rickmansworth Highway Board* (1998), 39 Ch.D. 272.

(o) A well into which waste water flows through pipes and thence escapes by percolation.

(p) 9 Halsbury's Statutes 83.

(q) *A.-G. v. Copeland*, [1902] 1 K.B. 690; 41 Digest 46, 336.

drain need not necessarily carry sewage, pipes carrying off rain and surface water coming within the definition of "drain" (v).

In the case of a conduit taking the drainage of more than one building, it has been held that it is a "sewer" from the point of junction of the drains from the first two houses and a "drain" above that point(s). Even though it is not put into use, pipes laid in a street may be a "sewer" (t), and it was held in a further case (u) that when an owner in process of developing land makes a new street, including a sewer, the pipes constitute a "sewer" before they are actually used. Where a pipe conveyed only rain and surface water, it was held to be a "sewer" when it took such water from more than one premises (w), and in a further case (x), a pipe taking only roof water from a house was held to be a "drain." In a case under the Metropolis Management Act, 1855 (y), where a drain from one house took sewage and rain water, and rain water only from a second house, it was held that the pipe taking the drainage from both premises was a "sewer" (z).

Numerous cases have been heard with regard to the effect of section 19 of the Public Health Acts Amendment Act, 1890, upon the procedure laid down in section 41 of the Public Health Act, 1875 (see *ante*, p. 87). In a case (a) where two houses, owned by different persons, were drained by a combined drain, the local authority served notices on both owners requiring the abatement of a nuisance arising from such drain. The work was done by the owners, one of whom brought an action for the recovery of the expenses incurred. It was held that the local authority could compel the owners to do the work under sections 41 and 19, *supra*, and that they were not liable to pay the owner his costs. In another case (b), a sewer established before 1848, drained a number of houses owned by different owners. From time to time the sewer was improved, and in 1887, the local authority obtained power by a local Act, to deal with combined drains under section 41, *supra*. Subsequently, the authority also adopted section 19 of the Act of 1890, *supra*. It was held that the

(v) *Holland v. Lazarus* (1897), 66 L.J. Q.B. 285; 41 Digest 14, 98.

(s) *Beckenham U.D.C. v. Wood* (1896), 60 J.P. 490; 41 Digest 5, 24. *Duncan v. Fulham, Vestry of* (1899), Times, February 11th.

(t) *Acton L.B. v. Batten* (1884), 28 Ch. D. 283; 41 Digest 5, 16.

(u) *Turner v. Handsworth U.D.C.*, [1909] 1 Ch. 381; 41 Digest 6, 32.

(w) *Ferrand v. Hallas Land and Building Co.*, [1893] 2 Q.B. 135; 41 Digest 17, 126.

(x) *Holland v. Lazarus* (1897), 66 L.J. Q.B. 285; 41 Digest 14, 98.

(y) 11 Halsbury's Statutes 889.

(z) *Silles v. Fulham B.C.*, [1903] 1 K.B. 829; 41 Digest 21, 160.

(a) *Self v. Hove Commissioners*, [1895] 1 Q.B. 685; 41 Digest 40, 295.

(b) *Hill v. Hair*, [1895] 1 O.B. 906; 41 Digest 4, 10.

sewer was a "sewer" at the passing of the Public Health Act, 1848, and had remained so ever since and that the local authority could not use their powers with regard to combined drains. The decision was disapproved however, in a case(c) where a drain in existence before 1890, passing through private property, took the drainage of a number of premises belonging to different owners. The local authority had adopted section 19, *supra*, and in proceedings for the recovery of expenses incurred in accordance with section 41, *supra*, the drain was held to be a single private drain. This decision was followed in a further case(d). The first named of two cases heard together on appeal(e) concerned a block of seven houses built in 1875, there were two other blocks of six houses belonging to a second owner, separated from the first block by a private passage giving access to the rear of the houses. A six-inch pipe passed under the twelve houses belonging to the second owner, receiving the drainage of each house, being continued as a nine-inch pipe under the six houses forming the first block, again receiving the drainage of each of these houses. Finally, the nine-inch drain was connected to the public sewer. It was held that where the drain took the drainage from houses belonging to both owners, it was a single private drain. It was also held that where a nuisance in a single private drain exists only on the property of one owner, the local authority may call upon such owner to abate it without the service of notices upon the other owners. The other case was similarly decided. In view of these decisions, the judgment in *Hill v. Hair*, *supra*, appears to have been over-ruled.

In another case(f), twelve houses (Nos. 51 to 73) belonged to one owner, No. 75 to a second owner, and Nos. 77 to 81 to a third owner. The sixteen houses were drained by means of a combined drain at the rear, connected to the public sewer at the front by means of a branch drain running at right angles and under a passage between Nos. 73 and 75. Each house was connected separately to the combined drain, which was constructed wholly on private land. It was not disputed that the branch drain was a "single private drain," but it was held, on appeal, that the combined drain at the rear of the twelve houses owned by one owner, was not a "single

(c) *Bradford v. Eastbourne Corporation*, [1896] 2 Q.B. 205; 41 Digest 4, 11.

(d) *Seal v. Merthyr Tydfil U.D.C.*, [1897] 2 Q.B. 543; 41 Digest 4, 12.

(e) *Thompson v. Eccles Corpn.*, *Haedicke v. Friern Barnet U.D.C.*, [1905] 1 K.B. 110; 41 Digest 41, 298.

(f) *Jackson v. Wimbledon U.D.C.*, [1905] 2 K.B. 27; 41 Digest 39, 292.

private drain." In another important case(*g*), the facts were as follows :—Six houses of a row belonged to the respondent, the houses being drained in pairs, the single drains from each house, uniting to form one combined drain from each pair of houses. The combined drains from each pair of houses, discharged into a line of pipes, laid in private ground behind the houses, which was connected to the public sewer. It was admitted that the combined drains from each pair of houses were "sewers," and on appeal to the House of Lords, it was held that the line of pipes receiving the combined drains from each pair of houses was not a "single private drain," on the ground that section 19 of the Act of 1890, *ante*, p. 89, only applies if the local authority can establish that the combined drain was originally constructed by reason of a requirement of the local authority made under sections 23 or 25 of the Public Health Act, 1875(*h*). This decision was followed in a recent case(*i*).

By discharging sewage into a stream in contravention of the Public Health Act, 1936, and the Rivers Pollution Prevention Act, 1876 (see *post*, p. 282), it is not possible to convert the stream into a sewer within the meaning of the Act of 1936, nor do repeated acts in violation of the statute, confer any right or rights on the wrongdoer(*j*).

Under the new Act, it will be observed that the essential difference between a "drain" and a "sewer"—the former serving one building only—has been maintained, but sewers are now divided into "public" and "private," according as to whether or not they have become vested in the local authority.

Further definitions in section 343 of the Act of 1936(*k*) are as follows :—

"house" means a dwelling-house, whether a private dwelling-house or not;

This definition is somewhat more restricted than that in the Act of 1875, which included schools and premises where persons were employed. The expression "dwelling-house," as used in the Housing Acts, has been held to include a common lodging-house(*l*), where the case of London County

(*g*) *Wood Green U.D.C. v. Joseph*, [1908] A. C. 419; 41 Digest 3, 9.

(*h*) 13 Halsbury's Statutes 635.

(*i*) *Hill v. Aldershot Corpn.*, [1933] 1 K.B. 259; Digest Supp.

(*j*) *George Legge & Son, Ltd. v. Wenlock Corpn.*, [1938] A.C. 204; 1 All E.R. 37.

(*k*) 29 Halsbury's Statutes 536.

(*l*) *In re Ross and Leicester Corpn.* (1932), 96 I.P. 459; Digest Supp.

Council *v.* Rowton House Co., (1897), was followed(*m*). Under the same Acts, a combined house and shop was held to be a "dwelling-house"(*n*).

"premises" includes messuages, buildings, lands, easements, and hereditaments of any tenure;

"street" includes any highway, including a highway over any bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

"statutory undertakers" means any persons authorised by an enactment or statutory order to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking.

SEWERAGE AND SEWAGE DISPOSAL.

It is the duty of every local authority to provide adequate public sewers for the effectual drainage of their district, and to make proper provision for the treatment of sewage(*o*). Where a local authority neglect to carry out their duty in regard to the provision of sewers or sewage disposal works, the Minister of Health is empowered to take action in accordance with section 322 of the Act of 1936 (see *ante*, p. 18).

As to compensation for war damage to buildings used by a sewerage or sewage disposal undertaking, see section 40, War Damage Act, 1941(*p*).

PROVISION AND CONSTRUCTION OF PUBLIC SEWERS AND SEWAGE DISPOSAL WORKS.

Section 15(1) of the Act of 1936, *infra*, empowers a local authority to construct or acquire public sewers and sewage disposal works.

Section 15(1), Public Health Act, 1936.—Provision of public sewers and sewage disposal works.

(1) A local authority may within their district and also, subject to the provisions of the next succeeding section, without their district—

(i) construct a public sewer—

(a) in, under or over any street, or under any cellar or vault below any street, subject, however, to the provisions of Part XII of this Act with respect to the breaking open of streets; and

(b) in, on or over any land not forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(*m*) 62 J.P. 68; 26 Digest 510, 2149.

(*n*) Ilkeston Corpn. *v.* Premier Garage Co. (Ilkeston), Ltd., C.A. 26th October, 1933 (not reported).

(*o*) Sect. 14, Public Health Act, 1936; 29 Halsbury's Statutes 333.

(*p*) 34 Halsbury's Statutes 40.

- (ii) construct sewage disposal works on any land acquired, or lawfully appropriated, for the purpose;
- (iii) by agreement acquire, whether by way of purchase, lease or otherwise, any sewer or sewage disposal works, or the right to use any sewer or sewage disposal works.

It has been held that a local authority may lay a sewer in a private road(*q*). It should be noted that an authority are entitled to construct a sewer on any land, after giving reasonable notice to the owner and occupier, but compensation must be paid in accordance with section 278 of the Act 1936 (see *ante*, p. 82), which provides that in determining the amount to be paid by the local authority, the enhanced value of the land (if any) arising as a result of the construction of the sewer, must be set off against the amount of compensation awarded. An injunction was granted restraining a local authority from constructing a sewer in private land on the grounds that insufficient notice had been given by the local authority of their intention to do so(*r*). It has been held, however, that an owner cannot obtain an injunction or damages on the ground only that such notice has not been given if the work has been done with his consent(*s*) or he had full knowledge of the proposals of the local authority(*t*). A local authority is not entitled to discharge sewage into any natural or artificial stream, watercourse, canal, pond, or lake, until it has been so treated as not to affect prejudicially the purity and quality of the water into which it is discharged(*a*). An authority are not entitled to create a nuisance by the exercise of their powers under this section(*b*) and they may be restrained by an injunction from proceeding with the proposed work(*c*).

It has been held(*d*) that the term "sewer" as defined in the Act of 1875, includes works such as manholes which form part of the sewer but not such work as pumping stations or other works for distributing, storing or treating sewage(*e*).

(*q*) *Taylor v. Oldham Corpn.* (1876), 4 Ch.D. 395; 26 Digest 270, 96. *Hill v. Wallasey L.B.*, [1894] 1 Ch. 133; 26 Digest 270, 97.

(*r*) *New River Co. v. Ware Union R.S.A.* (1883) L.J.N.C. 20.

(*s*) *Long v. Fulham Vestry* (1898), 47 W.R. 56; 43 Digest 373, 18.

(*t*) *Hutchings v. Seaford U.D.C.* (1898), *Times*, November 11; (1899), *Times*, November 6; *Cleckheaton U.D.C. v. Frith* (1898), 62 J.P. 536; 41 Digest 35, 262; *Montgomerie & Co. v. Haddington Corpn.*, [1908] A.C. 170; 41 Digest 30, *r*.

(*a*) Sect. 30, Public Health Act, 1936; 29 Halsbury's Statutes 348.

(*b*) Sect. 31, Public Health Act, 1936; 29 Halsbury's Statutes 348.

(*c*) *Lamacraft v. St. Thomas R.S.A.* (1880), 44 J.P. 441; 41 Digest 23, 175.

(*d*) *Swanston v. Twickenham Local Board* (1879), 11 Ch.D. 838, C.A.; 41 Digest 10, 66.

(*e*) *King's College, Cambridge v. Uxbridge R.D.C.*, [1901] 2 Ch. 768; 41 Digest 10, 68.

A local authority cannot construct sewers on land belonging to a dock undertaking or railway, without the consent of the undertakers or company concerned(*f*), but such consent must not be unreasonably withheld. Subsection (4) of section 333 of the Act of 1936 (see *ante*, p. 78) removes the saving in respect of docks and railways in so far as it relates to the opening and breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

Under section 334 of the Act of 1936 (see *ante*, p. 79), a local authority cannot interfere with any works belonging to a land drainage authority, without the consent of that body. Where an authority propose to construct a sewer which will cross or interfere with any watercourse or works, vested in or under the control of a land drainage authority, they must, before adopting plans for the work, give notice of their proposals to that authority(*g*). If the land drainage authority wish to object to the proposals of the local authority, they may serve a notice on such authority within twenty-eight days and the work may not be proceeded with until the Minister of Health, after a local inquiry, has approved the proposals either with or without modification(*h*).

It should be noted that whilst a local authority have power to construct a sewer on private land without the owner's consent, subject to the payment of compensation(*i*), they are not entitled to construct sewage disposal works, except on land which has been properly acquired or appropriated for the purpose. An authority may be restrained by injunction from proceeding with work of this kind without acquiring the land(*l*). In determining the amount of compensation payable in respect of damage sustained by reason of the construction, by a local authority, of a sewer on or over private land, the tribunal must also determine by what amount, if any, the value of the land has been enhanced by the construction of the sewer, and the local authority is entitled to set off that amount against the amount of any compensation awarded by the tribunal(*m*). In cases of this kind, compensation is assessed in accordance with the provisions of the Acquisition of Land

(*f*) Sect. 333, Public Health Act, 1936, *ante*, p. 77.

(*g*) *Ibid*, sect. 15(2); 29 Halsbury's Statutes 334.

(*h*) *Ibid*, sect. 15(3); 29 Halsbury's Statutes 334.

(*i*) See sect. 278, Public Health Act, 1936; see *ante*, p. 82.

(*l*) *Sutton v. Norwich Corpn.* (1858), 27 L.J.Ch. 739; 41 Digest 3, 1. *Att.-Gen. v. Metropolitan Board of Works* (1863), 9 L.T. 139; 28 Digest 468, 787.

(*m*) Sect. 278(4), Public Health Act, 1936; 29 Halsbury's Statutes 500; and see *ante*, p. 82.

(Assessment of Compensation) Act, 1919(o), which defines the expression "land" as including any interests in land and any easement or right in, to, or over land. Where any owner of land alleges that he has sustained injury as result of the negligent or unreasonable exercise of statutory powers by a local authority, the remedy is by action(p), not by a claim for compensation. It was held in a case(q), under section 16, Public Health Act, 1875(r), that a local authority were not compelled to purchase the whole of the land belonging to an owner when he claimed that his land would be so injuriously affected that it was equivalent to taking the whole of it, and that the matter could be dealt with by way of compensation. Where an alleged injury arises from the reasonable and proper use of statutory powers, which provide for payment of compensation for injury, the remedy is by claim for such compensation(a).

Before a sewage outfall or other works is constructed below high-water mark—that is, across a foreshore—the approval of the Board of Trade must be obtained(b).

BREAKING OPEN STREETS.

The powers of a local authority to break open streets for the purpose of constructing, laying or maintaining sewers, drains or pipes, are subject to the provisions of section 279 of the Act of 1936, *infra*.

Section 279, Public Health Act, 1936.—General provisions as to breaking open streets.

- (1) For the purposes of any section of this Act which confers powers on local authorities to construct, lay or maintain sewers, drains or pipes, the provisions of sections twenty-eight and thirty to thirty-four of the Waterworks Clauses Act, 1847, shall be incorporated with this Act, subject, however, to such adaptations as may be necessary to make those provisions applicable to the construction and maintenance of sewers and drains as well as to the laying and maintenance of water mains and pipes, and subject also to the following modifications, namely that—

- (a) any reference in the said provisions to the persons under whose control or management a street or bridge is, shall, in the case of a highway or bridge repairable by the inhabitants at large or by the inhabitants of the county, be construed as a reference to the authority who are

(o) 2 Halsbury's Statutes 1176.

(p) *Brine v. Great Western Rail. Co.* (1862), 2 B. & S. 402, 411; 38 Digest 38, 227.

(q) *Roderick v. Aston Local Board* (1877), 5 Ch.D. 328; 41 Digest 22, 174.

(r) 13 Halsbury's Statutes 633.

(a) *Stainton v. Woolrych* (1857), 23 Beav. 225; 11 Digest 295, 2245.

(b) *Ibid*, sect. 340, Public Health Act, 1936; 29 Halsbury's Statutes 535.

the highway authority or, as the case may be, the bridge authority in respect thereof ;

- (b) the reference in section thirty of the said Act of 1847 to three clear days shall be construed as a reference to seven clear days ;
 - (c) the expenses referred to in section thirty-four of the said Act may be recovered summarily as a civil debt ; and
 - (e) except in cases of emergency arising from defects in existing sewers, drains or pipes, a street or bridge which is under the control or management of, or repairable by, a railway company or dock undertakers shall not be opened or broken up without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister, whose decision shall be final.
- (2) The provisions so incorporated with adaptations and modifications as aforesaid shall apply in relation to any person not being a local authority who is empowered by this Act to construct, lay or maintain a sewer, drain or pipe as if, so far as his powers extend, he were the undertakers :

Provided that, where such a person gives notice to a railway company or dock undertakers that he desires to open or break up a street or bridge which is under their control or management or repairable by them, they may within fourteen days give notice to him that they intend themselves to execute the necessary work and, if before the expiration of fourteen days, or after such a notice has been given to him, he proceeds himself to open or break up the street or bridge, he shall be liable to a fine not exceeding fifty pounds.

- (3) Where a railway company or dock undertakers have given such a notice as is mentioned in the last preceding subsection, it shall not be obligatory on them to execute the work until the cost thereof, as estimated by their engineer or surveyor, has been paid to them or security for payment has been given to their satisfaction, but, if any payment so made to them exceeds the expenses reasonably incurred by them in the execution of the work, the excess shall be repaid by them and, if and so far as those expenses are not covered by the payment, if any, made to them, they may recover the expenses or the balance thereof from the person for whom the work was done.

Where a local authority propose to open a street which forms a level crossing, or crosses over or under a railway or other works of a railway company or dock undertakers and which is not under the control or management of the railway company or dock undertakers, proper notice must be given by the authority as in the case of proceedings under section 30 of the Waterworks Clauses Act, 1847(c). If the proposed work is likely to affect the structure of any bridge or other works belonging to the company or undertakers, it must be

carried out to the reasonable satisfaction of the engineer of the company or undertakers. In case of dispute, the matter may be settled by arbitration(*d*).

By section 281 of the Act of 1936(*e*), similar safeguards are provided for tramway undertakings, and a local authority are entitled by section 282(*f*) to require gas and water pipes to be moved. The owners of such may be required by notice served by the local authority to do the necessary work of alteration at the cost of the authority(*g*).

SEWERAGE WORK IN RURAL DISTRICTS.

If a rural authority propose to carry out works for the sewerage of any part of their district, they must, in accordance with subsection (4) of section 15 of the Act of 1936(*h*), give notice of their proposals to the parish council of the parish to be served by the works, or to the parish meeting if there is no parish council.

CONSTRUCTION OF WORKS OUTSIDE DISTRICT OF LOCAL AUTHORITY.

A local authority are entitled under section 15 of the Act of 1936, *supra*, to construct sewers and sewage disposal works outside their own district, subject to the conditions laid down in section 16, *infra*. Whilst the publication of notice, etc., under subsection (1) may be dispensed with in respect of the laying of a sewer in a highway repairable by the inhabitants at large, if the local authority obtain the consent of the authority in whose area the sewer is to be constructed (subsection (3)), this dispensation does not apply in the case of sewage disposal works, even if the consent of the local authority of the district is obtained.

Section 16, Public Health Act, 1936.—Notices to be given before constructing public sewers, or sewage disposal works, outside district.

- (1) Where a local authority, in the exercise of their powers under the last preceding section, propose to construct any public sewer or sewage disposal works outside their district, the provisions of that section with respect to notices and appeals shall apply, and the authority shall, in addition to giving any notice required by that section—

- (a) publish by advertisement in a local newspaper circulating in the district in which the proposed work is to be executed

(*d*) Sect. 280, Public Health Act, 1936; 29 Halsbury's Statutes 503.

(*e*) 29 Halsbury's Statutes 504.

(*f*) 29 Halsbury's Statutes 505.

(*g*) See sect. 153, Public Health Act, 1875, 13 Halsbury's Statutes 688, applied to Public Health Act, 1936, by sect. 282; 29 Halsbury's Statutes 505.

(*h*) 29 Halsbury's Statutes 334.

a notice describing the nature of their proposals and specifying the land in or on which they propose to execute any work, and naming a place where a plan illustrative of their proposals may be inspected at all reasonable hours by any person free of charge; and

- (b) serve, not later than the date of publication of the advertisement, a copy of the notice on the local authority of the district in which the proposed work is to be executed.
- (2) If, within twenty-eight days after the publication of the notice referred to in the preceding subsection, notice of objection to their proposals is served on the local authority either by the local authority of the district in which the proposed work is to be executed or by any owner or occupier of land directly affected by the proposals, they shall not proceed with their proposals, unless all objections so made are withdrawn, or the Minister, after a local inquiry, has approved the proposals, either with or without modification.
- (3) The foregoing provisions of this section with respect to the publication and service of, and appeals against, such additional notices as are therein referred to shall not apply where the work which a local authority propose to carry out in the district of another local authority consists only of the construction of a public sewer in a highway repairable by the inhabitants at large and they have obtained the consent of that other local authority.

MAP OF SEWERAGE SYSTEM.

Every local authority are required by section 32 of the Act of 1936, *infra*, to keep a map showing the sewers in their district. In accordance with section 3(3) of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883(*i*), every local authority were required to survey the sanitary works in their district and to prepare a map showing the situation of each. The expression "sanitary works" in section 3(3), *supra*, is a wide one, including works of sewerage, drainage, sewage disposal, lighting or water supply.

Section 32, Public Health Act, 1936.—Duty of local authority to keep map showing public sewers, etc.

- (1) Subject to the provisions of subsection (3) of this section with respect to existing sewers, every local authority shall keep deposited at their offices, for inspection by any person at all reasonable hours free of charge, a map showing and distinguishing all sewers and drains within their district which are—
 - (a) public sewers;
 - (b) sewers with respect to which a declaration of vesting has been made under this Part of this Act but has not yet taken effect;
 - (c) sewers or drains with respect to which an agreement to make such a declaration in the future has been entered into.

- (2) Where some of the public sewers in the district are reserved for foul water only or for surface water only, the map referred to in this section shall show also the purposes which each such sewer is intended to serve.
- (3) Public sewers which were vested in the local authority before the commencement of this Act shall be shown on the said map if they are reserved for foul water only or for surface water only, but, save as aforesaid, it shall not be obligatory on the local authority to show on the map a public sewer which was vested in them before the commencement of this Act.

TREATMENT OF SEWAGE.

Section 30 of the Act of 1936 (see *post*, p. 287) prohibits a local authority from conveying any foul water into any natural or artificial stream, watercourse, canal, pond, or lake, until it has been properly treated so as not to cause pollution. Section 31(*k*), requires a local authority to carry out their duties with regard to sewers and sewage disposal works so as not to create a nuisance. As to the pollution of rivers and streams, see chapter 12 (*post*, p. 282 *et seq.*).

LAND HELD FOR TREATING SEWAGE.

In accordance with section 29 of the Act of 1936(*l*), a local authority are entitled to utilise land held for the treatment of sewage or they may let or lease it for a period not exceeding twenty-one years, subject to the proviso that adequate steps must be taken for the effective disposal of the sewage without creating a nuisance.

PUBLIC SEWERS.

ADOPTION OF SEWERS BY LOCAL AUTHORITY.

The Public Health Act, 1936, deals with the adoption of sewers by a local authority according to the date of their construction. In the case of new sewers, the construction of which is completed after the 1st of October, 1937, the provisions of section 17 apply. Subsection (1), *infra*, empowers a local authority to declare any sewer or sewage disposal works to be vested in them.

Section 17(1), Public Health Act, 1936.—Adoption by local authority of sewers and sewage disposal works.

- (1) Subject to the provisions of this section, a local authority may at any time declare that any sewer or sewage disposal works situate within their district, or serving their district or any

part of their district, being a sewer or works the construction of which was not completed before the commencement of this Act, shall, as from such date as may be specified in the declaration, become vested in them :

Provided that an authority who propose to make a declaration under this subsection shall give notice of their proposal to the owner or owners of the sewer or works in question, and shall take no further action in the matter until either two months have elapsed without an appeal against their proposal being lodged under subsection (3) of this section, or, as the case may be, until any appeal so lodged has been determined.

Subsection (2) of section 17(*m*), enables an owner of any sewer or sewage disposal works to make application to the local authority requesting them to make a declaration in accordance with subsection (1), *supra*.

Where an owner of any sewer or sewage disposal works wishes to object to the action proposed by the local authority—either in respect to the making of a declaration or of a refusal to do so—he may appeal to the Minister of Health within a period of two months, in accordance with the provisions of subsection (3), *infra*.

Section 17(3), Public Health Act, 1936.—Adoption by local authority of sewers and sewage disposal works.

(3) An owner aggrieved by the proposal of a local authority to make a declaration under this section may appeal to the Minister within two months after notice of the proposal is served upon him, and an owner aggrieved by the refusal of a local authority to make such a declaration may appeal to the Minister at any time after receipt of notice of their refusal, or if no such notice is given to him, at any time after the expiration of two months from the making of his application.

On the hearing of an appeal under this subsection, the Minister may allow or disallow the proposal of the local authority or, as the case may be, make any declaration which the local authority might have made, and any declaration so made shall have the same effect as if it had been made by the authority :

Provided that the Minister may, if he thinks fit, specify conditions, including conditions as to the payment of compensation by the local authority, and direct that his declaration shall not take effect unless any conditions so specified are accepted.

Before a local authority (or on appeal, the Minister of Health) make a declaration to adopt a sewer or sewage disposal works, they must have regard to all the circumstances of the case and in particular, to the following considerations specified in subsection (4).

Section 17(4), Public Health Act, 1936.—Adoption by local authority of sewers and sewage disposal works.

- (4) A local authority and, on an appeal, the Minister, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations :—
- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the authority have provided, or propose to provide, for their district or any part thereof ;
 - (b) whether the sewer is constructed under a highway, or under land reserved by a planning scheme for a street ;
 - (c) the number of buildings which the sewer is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings ;
 - (d) the method of construction and state of repair of the sewer or works ; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

With regard to paragraph (a), *supra*, reference should be made to section 19 of the Act of 1936, *infra*, which empowers a local authority to require a proposed sewer or drain to be so constructed as to form part of their general system of sewers.

Section 19, Public Health Act, 1936.—Power of local authority to require proposed sewer or drain to be so constructed as to form part of general system.

- (1) Where a person proposes to construct a drain or sewer, the local authority may, if they consider that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which they have provided or propose to provide, require him to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall, or otherwise, from the manner in which he proposes, or could otherwise be required by them, to construct it, and it shall be his duty to comply with the requirements of the local authority :

Provided that, if he is aggrieved by the requirements of the authority, he may within twenty-eight days appeal to the Minister who may either disallow the requirements or allow them with or without modification.

- (2) An authority who exercise the powers conferred upon them by this section shall repay to the person constructing the drain or sewer the extra expenses reasonably incurred by him in complying with their requirements and, until the drain or sewer becomes a public sewer, they shall also from time to time repay to him so much of any expenses reasonably incurred by him in repairing or maintaining it as may be attributable to their requirements having been made and complied with, and, if any question arises as to the amount of any payment to be made to him under this subsection, that question may on his applica-

tion be determined by a court of summary jurisdiction, or he may require it to be referred to arbitration.

- (3) If any person who under this section has been required by a local authority to construct a drain or sewer in a particular manner constructs it otherwise than in accordance with the requirements of the authority, he shall be liable to a fine not exceeding fifty pounds, but without prejudice to the right of the authority to avail themselves of any other remedy.
- (4) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by a railway company or dock undertakers in or on land which belongs to them and is held or used by them for the purposes of their undertaking.

Where a local authority have, by declaration under section 17(1) of the Act of 1936, *ante*, p. 99, adopted a sewer, any person who immediately before the making of such declaration was empowered to use the sewer in question, is entitled to continue to do so to the same extent as if the declaration had not been made⁽ⁿ⁾. Subsection (6) of section 17(o), empowers a local authority to adopt a part only of a sewer.

If a local authority wish to adopt a sewer or sewage disposal works situated outside their area, or if within their area but serving another district, the provisions of subsections (7) and (8) of section 17 of the Act of 1936, *infra*, apply.

Section 17 (7) (8), Public Health Act, 1936.—Adoption by local authority of sewers and sewage disposal works.

- (7) Where a local authority are about to take into consideration the question of making a declaration under this section with respect to a sewer or sewage disposal works situate within the district of another local authority, or situate within their own district but serving the district, or any part of the district, of another local authority, they shall give notice to that other authority, and no declaration shall be made by them until either that other authority have consented thereto, or the Minister, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

In this subsection references to another local authority and their district include references to the council of a metropolitan borough and that borough.

- (8) Where a local authority have made a declaration under this section with respect to a sewer or sewage disposal works situate within the district of another local authority or within a metropolitan borough, they shall forthwith give notice of the fact to that other authority or, as the case may be, to the council of that borough.

A local authority are not entitled to adopt any sewer or sewage disposal works which is vested in another local

(n) Sect. 17(5), Public Health Act, 1936; 29 Halsbury's Statutes 337.

(o) 29 Halsbury's Statutes 337.

authority (including the London County Council or a metropolitan borough council) or a joint sewerage board, or a railway company or dock undertaking (where the sewer or works is situated in or on land which belongs to such company or undertaking and is held or used by them for the purposes of their undertaking), except upon the application of that authority, council, board or statutory undertaking concerned(*p*).

It frequently happens that when land is about to be developed for building purposes, the owner desires to know the intentions of the local authority with regard to the adoption of any sewers which may be constructed on the estate. Section 18 of the Act of 1936, *infra*, enables an authority to agree to declare a sewer or sewage disposal works to be vested in them, on some future specified date, or upon certain events taking place, *e.g.* completion of the development of the estate. This section should prove of considerable value in regard to the development of estates, as previously there was some doubt as to how far a local authority were entitled to agree to adopt sewers prior to their construction. Both local authorities and estate developers will now be able to agree beforehand on a definite policy.

Section 18, Public Health Act, 1936.—Power of local authority to agree to adopt sewer or drain, or sewage disposal works, at future date.

- (1) A local authority may agree with any person constructing, or proposing to construct, a sewer or sewage disposal works that, if the sewer or works is or are constructed in accordance with the terms of the agreement, they will upon the completion of the work, or at some specified date, or on the happening of some future event, declare the sewer or works to be vested in them, and any such agreement shall be enforceable against the authority by the owner or occupier for the time being of any premises served by the sewer or works.
- (2) The foregoing provisions of this section shall apply also in relation to drains, but it shall be a condition of any agreement made under those provisions with respect to a drain that the declaration shall not be made before the drain has become a sewer.
- (3) A local authority shall not make an agreement under this section with respect to a sewer or drain or sewage disposal works situate within the district of another local authority or within a metropolitan borough, until that other authority or, as the case may be, the council of that borough have consented thereto, or the Minister, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

VESTING OF SEWERS IN LOCAL AUTHORITY.

Section 20 of the Act of 1936, *infra*, details the sewers and sewage disposal works which will vest in a local authority, and includes all sewers and sewage disposal works subject to a declaration made under section 17 of the Act of 1936, *ante*, p. 99.

Section 20, Public Health Act, 1936.—Vesting of public sewers and sewage disposal works in local authority.

- (1) All sewers within the meaning of the Public Health Act, 1875, and sewage disposal works which, by virtue of the provisions of that Act, were immediately before the commencement of this Act vested in a local authority, shall continue to be vested in them, and there shall also vest in them—
 - (a) all combined drains constructed before the commencement of this Act which, by virtue of the provisions of the Public Health Act, 1875, would immediately before the commencement of this Act have been vested in the local authority as sewers but for the provisions of some enactment or statutory scheme relating to the construction of combined drains, or of an order made under such an enactment or scheme;
 - (b) all sewers and sewage disposal works constructed by them at their expense, or acquired by them;
 - (c) all sewers constructed under any enactment relating to the sewerage of private streets to the satisfaction of the council carrying that enactment into execution, except any such sewer which by virtue of section twenty-nine of the Local Government Act, 1929, will vest in the county council; and
 - (d) all sewers and sewage disposal works with respect to which a declaration of vesting made under the foregoing provisions of this Part of this Act has taken effect.
- (2) Sewers which by virtue of this section continue to be, or become, vested in a local authority shall be known as, and are in this Act referred to as, "public sewers":

Provided that a sewer constructed by a local authority after the commencement of this Act for the purpose only of draining property belonging to them shall not be deemed to be a public sewer for the purposes of this Act until it has been declared to be a public sewer.

It will be observed that all sewers which by virtue of section 20, *supra*, vest in the local authority are known as "public sewers," but this does not mean that the whole of the cost of maintenance of every public sewer will fall upon the authority, as in certain cases, dealt with in section 24 of the Act of 1936 (see *post*, p. 106), any expenses incurred by an authority in connection with the public sewers in question may be recovered from the owners of the premises served by the sewers.

The vesting of sewers under the Public Health Act, 1875, was governed by section 13(*q*), which provided that all existing and future sewers should vest in the local authority except (1) sewers made for profit; (2) sewers made for the purpose of draining, preserving, or improving land under any local or private Act, or for the purpose of irrigating land; and (3) sewers under the authority of any commissioners of sewers appointed by the Crown. It has been held on numerous occasions that a sewer is not "made for profit" simply because it is provided for the owners of houses in order to get rid of their sewage, a distinction being made between "profit" and "use"(*r*). Where, however, a sewerage system was constructed (and from time to time extended) by the lord of the manor and owner of a large part of the town, and a voluntary sewage rate was levied, it was held that the sewers were made for profit and could not therefore become vested in the local authority(*s*). Similarly, in the case of a sewer provided for the purpose of conveying water to a disused gravel pit for the watering of cattle(*t*); the collection of water off land to prevent its drainage into a quarry so as to enable the quarry to be worked more economically(*u*); and other cases(*x*).

With regard to paragraph (a) in subsection (1) of section 20, *ante*, p. 104, combined drains were governed either by section 41 of the Public Health Act, 1875(*y*), as amended by the adoption of section 19 of the Public Health Acts Amendment Act, 1890(*z*), or by private local Acts. The effect of sections 41 and 19, *supra*, was that where action was taken in respect of a drain taking the drainage of more than one building, where the buildings were owned by *different* owners, the drain remained a "drain" repairable by the owners according to their use of it. In all other cases, where section 19 of the Act of 1890 was not in force in a district, or where the premises concerned were owned by the same person, a drain taking the drainage of more than one building was a "sewer" repairable by the local authority. In some towns, a local

(*q*) 13 Halsbury's Statutes 631.

(*r*) *Acton L.B. v. Batten* (1884), 28 Ch.D. 283; 41 Digest 5, 16. *Pinnock v. Waterworth* (1887), 51 J.P. 248; 41 Digest 18, 136. *Bonella v. Twickenham L.B.* (1887), 18 Q.B.D. 577; 41 Digest 19, 151.

(*s*) *Minehead L.B. v. Luttrell*, [1894] 2 Ch. 178; 41 Digest 16, 124.

(*t*) *Croysdale v. Sunbury-on-Thames U.D.C.*, [1898] 2 Ch. 515; 41 Digest 10, 73.

(*u*) *Sykes v. Sowerby U.D.C.*, [1900] 1 Q.B. 584; 41 Digest 11, 76.

(*x*) See notes to sect. 13, Public Health Act, 1875, *Lumley's Public Health*, 11th Edition.

(*y*) 13 Halsbury's Statutes 642.

(*z*) 13 Halsbury's Statutes 831.

Act placed the responsibility for the repair and maintenance of a combined drain upon the owner, whether the drain was for the drainage of more than one building and owned by the same or different owners. It will be observed that by section 20, *supra*, all these combined drains become vested in the local authority, but the responsibility for their maintenance will still remain with the owners (see *infra*).

COST OF MAINTAINING CERTAIN PUBLIC SEWERS.

Although all "public sewers," as defined in section 20 of the Act of 1936 (see *ante*, p. 104), are vested in the local authority, an authority are entitled to recover the cost of maintenance in some cases from the owners of the buildings served by the sewer in question, in accordance with the provisions of section 24 of the Act of 1936, *infra*.

Section 24, Public Health Act, 1936.—Power of local authority to recover cost of maintaining certain lengths of public sewers.

- (1) Where a local authority have carried out work for the maintenance of any length of a public sewer, being a length to which this section applies, they may, subject to the provisions of this section, recover the expenses reasonably incurred by them in so doing from the owners for the time being of the premises served by that length of sewer in such proportions as the authority deem it fair to fix, regard being had by them to all the circumstances of the case, including the benefit derived by each owner from that length of sewer, the distance for which it is laid in land belonging to each owner, the point at which any work was necessary and the responsibility for any act or default which rendered the work necessary :

Provided that, unless in the opinion of the local authority immediate action is necessary, they shall, not less than seven days before commencing the work, give notice of the work which they propose to undertake to the owners of any premises known by them to be served by the length of sewer in question and consider any representations as to the need for, and reasonableness of, the proposed work which may be made to them by any of those owners within seven days of the service of the notice.

The expression "maintenance" in relation to any length of a public sewer to which this section applies includes repair, renewal and improvement, but in the case of improvement includes only such improvement as may be necessary to make that length of sewer adequate for draining the premises served by it immediately before the improvement was undertaken.

- (2) If a local authority, in lieu of executing works of maintenance only to any length of a public sewer to which this section applies, improve or enlarge that length of sewer for the purpose of enabling it to serve additional premises, they shall be entitled to recover under the last preceding subsection from the owners of the premises served by the existing sewer such sum only

as they might reasonably have expended in executing works of maintenance necessary to make that length of sewer adequate for draining the premises served by it immediately before the improvement or enlargement was undertaken, and for the purposes of any future works of maintenance that length of sewer shall cease to be a length of sewer to which this section applies.

- (3) Any question arising under this section as to whether any length of sewer is one to which this section applies, as to the necessity for any work carried out by a local authority, as to the amount, or the reasonableness, of the expenses incurred by them, or as to the fairness of any division or apportionment of expenses made by them, may be determined by a court of summary jurisdiction either in proceedings taken by the local authority for the recovery of expenses incurred by them, or on the application of any owner concerned.
- (4) This section applies to any length of public sewer, being either—
 - (a) a length for the maintenance of which persons other than the local authority were, immediately before the commencement of this Act, responsible by virtue either of some enactment or statutory scheme relating to combined drains or of an order made under such an enactment or scheme, or of an agreement, being an enactment, scheme, order or agreement whereby the authority were entitled to require those persons to maintain that length of the sewer, or to abate any nuisance therein, or to contribute in proportions to, or indemnify the authority against, any expenses incurred by the authority in maintaining it; or
 - (b) a length which was vested in the local authority immediately before the commencement of this Act, but was not constructed at their expense or at the expense of any authority whose successors they are, and which lies in a garden, court or yard belonging to any of the premises served by the sewer or common to any two or more of those premises, or lies under a building comprised in any of those premises, or lies in a roadway, footway, passage or alley which is used solely or mainly as a means of access to those premises or any of them, but is not a highway repairable by the inhabitants at large.
- (5) So much of any local Act as relates to the liability for the repair of a single private drain connecting two or more houses with a public sewer is hereby repealed.

It is important to note that the definition of “maintenance,” which includes “repair, renewal and improvement,” does not include cleansing and it is now generally accepted that the cleansing of public sewers is the responsibility of the local authority. This is an important point, when it is remembered that public sewers include combined drains in existence on 1st October, 1937 (see *ante*, p. 104).

It will be observed that, except in case of emergency, no work may be carried out until the expiration of seven days from the date of service of a notice upon the owner stating

the nature of the proposed works. The local authority must consider any representations made by any of the owners concerned, as to the necessity for and reasonableness of, the work in question. It should also be noted that whilst works of improvement may be carried out, such improvement may only include work necessary to render the sewer adequate for the drainage of the premises already served by the sewer. If a sewer is improved or enlarged in order to serve additional premises, the provisions of subsection (2) apply, and where this happens it should be remembered that the new sewer ceases to be a sewer in respect of which the local authority are empowered to recover any of the costs of future maintenance or repair. In other words, where an authority alter an existing public sewer, which was previously maintained at the cost of the owners, so as to enable it to serve additional premises, any future expenses in connection with the new sewer will fall entirely upon the local authority.

The position with regard to "combined drains" under section 41 of the Public Health Act, 1875, as amended by section 19 of the Public Health Acts Amendment Act, 1890, or under private local Acts, is dealt with by subsection (4), *supra*, and it will be seen that the cost of maintaining such combined drains (which now become "public sewers" in accordance with section 20 of the Act of 1936 (see *ante*, p. 104)) remains with the owners. In the case of "combined drains" vesting in the local authority but not subject, immediately prior to the 1st October, 1937, to any of the above provisions, paragraph (b) of subsection (4) of section 24, *supra*, places the cost of maintenance upon the owners, where the drain in question was not constructed by the local authority and where it lies in a garden, court or yard belonging to the premises served by the combined drain. It should be noted in this connection that section 38 of the Act of 1936 (see *post*, p. 127) empowers a local authority to require two or more new buildings to be drained by a combined drain, if they consider it more economical or advantageous to do so, and in such a case, the combined drain becomes a "private sewer" not maintainable by the local authority.

The general effect of the provisions relating to sewers and combined drains, referred to in the preceding paragraphs of this chapter, may be summarised as follows :—

(1) **Sewers and drains constructed prior to 1st October, 1937—**

Any pipe taking the drainage of more than one building is a "sewer," provided—

(a) that where such a pipe was a "combined drain" as a result of the operation of section 19 of the Public Health

Acts Amendment Act, 1890, or of the provisions of any private local Act, and not repairable by the local authority; or

- (b) that the sewer is one which was not constructed at the expense of the local authority and one which lies in the gardens or yards of the houses served by it, or lies under a building comprised in any of those premises or lies in a roadway, footway, passage or alley which is used solely or mainly as a means of access to those premises or any of them, but is not a highway repairable by the inhabitants at large,

the local authority are entitled to recover from the owners of the premises served by the sewer, any expenses reasonably incurred by them in connection with its maintenance. If the local authority alter or enlarge in any way such public sewer, so as to enable it to accommodate the drainage from additional premises, the sewer will cease to be repairable at the expense of the owners, and the cost of maintenance of the whole of it will fall upon the local authority.

(2) **Sewers and drains constructed after the 30th September, 1937—**

Except in the case of a combined drain constructed in accordance with the provisions of section 38 of the Act of 1936 and known as a "private sewer" (see *post*, p. 127), the cost of maintenance of which will fall upon the owners, all pipes taking the drainage of more than one building will be "sewers" but the cost of maintenance will only fall upon the local authority if the sewer has been adopted by them in accordance with the provisions of section 17 of the Act of 1936 (see *ante*, p. 99).

The position of many sewers and drains in existence at 1st October, 1937, remains unaltered, but some sewers now repairable by the local authority will, from the above date, become maintainable by the owners in conformity with paragraph (1)(b), *supra*. This modification renders inoperative the decisions in a number of important cases (*Jackson v. Wimbledon U.D.C.*; *Wood Green U.D.C. v. Joseph*; *Hill v. Aldershot Corpn.*—see *ante*, pp. 90 and 91), and, in effect, amends the law retrospectively.

So far as highway drains are concerned, those in existence at 1st October, 1937, which were properly sewers and therefore vested in the local authority, continue to be so vested as public sewers(a), but the definition of "sewer" in the Act of 1936 (see *ante*, p. 87), limits the term to sewers and drains used for the drainage of buildings and yards appurtenant to buildings. Pipes constructed for the drainage of streets or highways after 30th September, 1937, are not sewers within the meaning of the Act of 1936.

(a) Sect. 20(1), Public Health Act, 1936; 29 Halsbury's Statutes 341.

USE OF HIGHWAY SEWERS FOR SANITARY PURPOSES.

In accordance with section 29(2) of the Local Government Act, 1929(b), all sewers and drains belonging to roads maintained by county councils, became vested in such councils. Section 21 of the Act of 1936, *infra*, enables a local authority and a county council, by agreement, to arrange either for a highway sewer to be used by the local authority, or a public sewer to be used by the county council.

Section 21, Public Health Act, 1936.—Agreements with county council for use of highway drains and sewers for sanitary purposes, or to allow public sewers to be used for drainage of highways.

- (1) Subject to the provisions of this section, a county council and a local authority may agree that—
 - (a) any drain or sewer which is vested in the county council in their capacity of highway authority may, upon such terms as may be agreed, be used by the local authority for the purpose of conveying surface water from premises or streets;
 - (b) any public sewer vested in the local authority may, upon such terms as may be agreed, be used by the county council for conveying surface water from roads repairable by the county council.
- (2) Where a sewer or drain with respect to which a county council and a local authority propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage authority, the agreement shall not be made without the consent of that other sewerage authority, who may give their consent upon such terms as they think fit.
- (3) A county council or local authority shall not unreasonably refuse to enter into an agreement for the purposes of this section or insist unreasonably upon terms unacceptable to the other party, and a sewerage authority shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party thereto, and any question arising under this section as to whether or not any authority or council are acting unreasonably shall be referred to the Minister, whose decision shall be final.
- (4) Nothing in this section shall be construed as limiting the rights of a county council under subsection (2) of section twenty-nine of the Local Government Act, 1929.

ALTERATION OR CLOSURE OF PUBLIC SEWER.

A local authority may alter the size or course of any public sewer vested in them or may discontinue its use, either entirely or for any particular purpose (*e.g.* foul water drainage or surface water drainage), provided they have constructed

another sewer for the use of those persons using the old sewer. The cost of the new sewer, together with any alterations to the drains of any buildings connected to it, must be borne by the local authority(c).

MAINTENANCE OF PUBLIC SEWERS.

Section 23 of the Act of 1936(d) requires every local authority to maintain, cleanse and empty all public sewers vested in them, except in the case of those public sewers in respect of which they are entitled to recover the cost of maintenance from the owners in accordance with section 24 (see *ante*, p. 106). This section does not apply to a nuisance arising from the discharge of sewage into a river(e), as to which see chapter 12, relating to the pollution of rivers (see *post*, p. 282). If a local authority neglect to carry out their duties under section 23, *supra*, they are liable to pay damages to any person affected by their neglect. Damages were obtained in a case(f) where sewage overflowed from a sewer from time to time and on one occasion formed a large pool of sewage in a field, polluting the water in the plaintiff's well, thereby causing illness in certain members of his family. In another case(g), damages were obtained where a sewer was improperly constructed. Damages were awarded in a case(h) where the local authority were found to have negligently and improperly altered certain sewers in such a manner that they were not properly ventilated, in consequence of which the plaintiff sustained illness. Men sustaining damage from sewer gas, whilst engaged in cleansing a sewer, recovered damages from the local authority(i). It has been held in numerous cases(k) that a local authority are liable for the negligence of contractors employed by them for the construction of a sewer, but an authority will not be liable in respect of defects such as those causing accidents through subsidence, unless they can be shown to have been negligent(l), and an authority are not liable in damages for failure to keep their sewers clean, if they have used

(c) Sect. 22, Public Health Act, 1936 ; 29 Halsbury's Statutes 343.

(d) 29 Halsbury's Statutes 343.

(e) *Harrington (Earl) v. Derby Corpn.*, [1905] 1 Ch. 205 ; 41 Digest 34, 256.

(f) *Touzeau v. Slough U.D.C.* (1896), 60 J.P. 103 ; 41 Digest 25, 196.

(g) *Whitfield v. Bishop Auckland U.D.C.* (1897), 42 Sol. Jo. 67.

(h) *Brown v. Wickham U.D.C.* (1898), *Times*, July 14.

(i) *Digby v. East Ham U.D.C.* (1896), 13 T.L.R. 11, and (1897), *Times*, May 25 ; 36 Digest 21, 98.

(k) *Hardaker v. Idle District Council*, [1896] 1 Q.B. 335 ; 34 Digest 161, 1255 ; etc.

(l) *Lambert v. Lowestoft Corpn.*, [1901] 1 K.B. 590 ; 38 Digest 26, 141.

reasonable care in endeavouring to do so(*m*). In a case(*n*) where the plaintiff claimed for damages sustained as the result of the local authority's failure to cleanse an open sewer, the Court of Appeal distinguished between *maintenance* and *management* and saw nothing in section 299 of the Public Health Act, 1875(*o*), to take away the right of action of a person who has sustained injury through the neglect of the authority. This decision may have a bearing on the interpretation of the expression "maintenance" in section 24 of the Act of 1936 (see *ante*, p. 106). A local authority may by order of the Minister of Health issued in accordance with section 322 of the Act of 1936 (see *ante*, p. 18), be declared to be in default in the discharge of their duties in connection with the maintenance of sewers and the Minister may direct them to do what is necessary to remove the default. It has been held that a local authority are not bound to provide sewers to withstand the pressure arising from extraordinary storms(*p*). There is no express right of access to a sewer in private property, but it has been held that notwithstanding that omission, there is an implied right of access to the extent reasonably necessary to enable the local authority to carry out their duty regarding the maintenance, cleansing, etc., of sewers belonging to them(*q*).

BUILDINGS NOT TO BE ERECTED OVER SEWERS.

A local authority are empowered by section 25 of the Act of 1936(*r*) to reject any building plans where it is proposed to erect or extend a building, over any sewer or drain which is shown on the map of sewers required to be kept by the authority in accordance with section 32 of that Act (see *ante*, p. 98), unless they are satisfied that in the circumstances of the particular case they may properly consent, either subject to conditions or not, to the proposed erection or extension. If any dispute arises between the local authority and a person submitting a plan, the matter may be referred by either party to a court of summary jurisdiction for a decision. If a building has been erected over a sewer before the 1st of October, 1937, without the written consent of the local authority having been obtained as required by section 26

(*m*) *Hammond v. St. Pancras Vestry* (1874), L.R. 9 C.P. 316; 38 Digest 25, 135.

(*n*) *Baron v. Portslade U.D.C.*, [1900] 2 Q.B. 588; 38 Digest 153, 27.

(*o*) 13 Halsbury's Statutes 750.

(*p*) *Brown v. Sargent* (1858), 1 F. and F. 112; 36 Digest 52, 329.

(*q*) *Birkenhead Corpn. v. London and North Western Rail. Co.* (1885), 15 Q.B.D. 572; 41 Digest 16, 119.

(*r*) 29 Halsbury's Statutes 345.

of the Public Health Act, 1875(s), the local authority may, by notice served in accordance with subsection (3) of section 25 of the Act of 1936(t), require the building to be demolished or altered. It has been held that where the local authority's consent to the erection of buildings had never been asked for, the provisions of subsection (3) of section 25, *supra*, did not apply(u). The provisions of Part XII of the Act of 1936 (see *ante*, p. 64), regarding appeals against, and the enforcement of, notices requiring the execution of works, apply in respect of notices served under section 25, *supra*.

CERTAIN MATTERS NOT TO BE PASSED INTO SEWERS.

Certain injurious matters, specified in section 27 of the Act of 1936, *infra*, must not be passed into sewers.

Section 27, Public Health Act, 1936.—Certain matters not to be passed into public sewers.

- (1) No person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer—
 - (a) any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents ; or
 - (b) any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam which, or a liquid which when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous, or the cause of a nuisance, or prejudicial to health ; or
 - (c) any petroleum spirit, or carbide of calcium.
- (2) A person who contravenes any of the provisions of this section shall be liable to a fine not exceeding ten pounds and to a further fine not exceeding five pounds for each day on which the offence continues after conviction therefor.
- (3) In this section the expression " petroleum spirit " means any such—
 - (a) crude petroleum ;
 - (b) oil made from petroleum, or from coal, shale, peat or other bituminous substances ; or
 - (c) product of petroleum or mixture containing petroleum, as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act, 1928, gives off an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit.

COMMUNICATION OF SEWERS WITH SEWERS OF ANOTHER AUTHORITY.

A sewerage authority(w) may, by agreement, made in accordance with section 28 of the Act of 1936(x), and subject

(s) 13 Halsbury's Statutes 637.

(t) 29 Halsbury's Statutes 346.

(u) Abingdon Corpn. v. James, Abingdon Corpn. v. Thane, [1940] Ch. 287 ; [1940] 1 All E.R. 446.

(w) See definition, *ante*, p. 86.

(x) 29 Halsbury's Statutes 347.

to the approval of the Minister of Health, cause any sewer vested in them to communicate with a sewer of another local authority. The agreement may provide for the manner of carrying out the work and the terms on which the communication is accepted by the second authority. Where a sewer discharges into a sewer or sewage disposal works of another local authority, the authority discharging the sewage may not admit further sewage without the consent of the other local authority. In a case where surface water from a limited number of premises was admitted into the sewers of the adjoining authority, an injunction was granted prohibiting the admission of surface water from houses other than those subject to the agreement(y).

ALTERATION OF SEWERS, ETC., BY STATUTORY UNDERTAKERS.

Section 330 of the Act of 1936, *infra*, empowers certain statutory undertakers or a land drainage authority, at their own expense, to alter any sewers, drains, culverts, or pipes.

Section 330, Public Health Act, 1936.—Power of railway companies, dock undertakers and land drainage authorities to alter sewers, etc., vested in a local authority.

Any railway company, dock undertakers or land drainage authority may, after giving reasonable notice to the local authority concerned, at their own expense and on substituting other sewers, drains, culverts and pipes which will be equally effectual and will entail no additional expense on the local authority, take up, divert or alter the level of any sewers, drains, culverts or pipes vested in the local authority which pass under, or interfere with, or interfere with the improvement or alteration of, the railway of the railway company, or, as the case may be, any river, canal, towing path or works forming part of the undertaking of the undertakers, or any watercourse or other works vested in or under the control of the land drainage authority.

In case of dispute, as to the suitability of the substituted sewers, drains, culverts, or pipes, the matter may be referred to an arbitrator(z).

DRAINAGE.

Local authorities are empowered by the Public Health Act to require buildings to be provided with proper means of drainage, and the supervision of works of drainage forms an important part of the duties of sanitary officers.

(y) *Tyldesley U.D.C. v. Leigh R.D.C.* (1925), 23 L.G.R. 243; 41 Digest 32, 236.

(z) Sect. 332, Public Health Act, 1936; 29 Halsbury's Statutes 531.

RIGHTS OF OWNERS AND OCCUPIERS TO DRAIN TO PUBLIC SEWERS.

Owners or occupiers of premises, are entitled to drain to public sewers vested in the local authority, in accordance with the provisions of section 34(1) of the Act of 1936, *infra*.

Section 34(1), Public Health Act, 1936.—Right of owners and occupiers within district to drain into public sewers.

- (1) Subject to the provisions of this section, the owner or occupier of any premises, or the owner of any private sewer, within the district of a local authority shall be entitled to have his drains or sewer made to communicate with the public sewers of that authority, and thereby to discharge foul water and surface water from those premises or that private sewer :

Provided that nothing in this subsection shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process ; or
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment (including any enactment in this Act) ; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
 - (i) foul water into a sewer provided for surface water ; or
 - (ii) except with the approval of the local authority, surface water into a sewer provided for foul water ; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

Drainage of trade premises.—The Public Health (Drainage of Trade Premises) Act, 1937(*a*), gives a right to occupiers of trade premises to discharge trade effluents into public sewers subject to special restrictions contained in the Act, and notwithstanding the provisions of section 34 of the Act of 1936, *supra*. Section 27 of the Act of 1936 (see *ante*, p. 113) is modified so far as it applies to trade effluents, but if a trade effluent is discharged in a manner not in accordance with the Public Health (Drainage of Trade Premises) Act, 1937, the prohibition in section 27(1) of the Act of 1936 applies. Paragraph (c) of subsection (1) of section 27, *supra* (relating to petroleum spirit) is not affected(*b*).

The expression “ *trade premises* ” means any premises used or intended to be used for carrying on any trade or industry,

(*a*) 30 Halsbury's Statutes 695 ; the Act came into operation on 1st July, 1938.

(*b*) Sect. 1(2), Public Health (Drainage of Trade Premises) Act, 1937 ; 30 Halsbury's Statutes 698.

and "trade effluent" means any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, and, in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on at those premises, but does not include domestic sewage(c).

The *special restrictions on the discharge of trade effluents* into public sewers are contained in section 2, *infra*, of the Act of 1937.

*Section 2, Public Health (Drainage of Trade Premises) Act, 1937.—
Special restrictions on discharge of trade effluents.*

- (1) No trade effluent shall be discharged from any trade premises into a public sewer of a local authority otherwise than in accordance with a written notice (hereafter in this Act referred to as "a trade effluent notice") served on the local authority by the owner or occupier of the premises, stating—
 - (a) the nature or composition of the trade effluent ;
 - (b) the maximum quantity of the trade effluent which it is proposed to discharge on any one day, and
 - (c) the highest rate at which it is proposed to discharge the trade effluent ;

and no trade effluent shall be discharged in accordance with such a notice until the expiration of the period of two months, or such less time as may be agreed to by the local authority, from the day on which the notice is served on the local authority (hereafter in this Act referred to as "the initial period").

- (2) In so far as the discharge of any trade effluent in accordance with a trade effluent notice would not be lawful without the consent of the local authority, the notice shall be deemed to be an application for that consent.
- (3) Where a trade effluent notice in respect of any premises is served on a local authority, the local authority may, at any time within the initial period, give to the owner or occupier, as the case may be, of those premises a direction that no trade effluent shall be discharged in pursuance of the notice until a specified date after the end of the initial period ; and, in so far as the discharge of any trade effluent in accordance with the trade effluent notice requires the consent of the local authority in order to be lawful, the local authority may give that consent either unconditionally or subject to such conditions as the local authority think fit to impose with respect to—
 - (a) the sewer or sewers into which any trade effluent may be discharged in pursuance of the trade effluent notice,
 - (b) the nature or composition of the trade effluent which may be so discharged,
 - (c) the maximum quantity of any trade effluent which may be so discharged on any one day, either generally or into a particular sewer,

(c) *Ibid*, sect. 14 ; *ibid*, 706.

- (d) the highest rate at which any trade effluent may be discharged in pursuance of the trade effluent notice, either generally or into a particular sewer, and
- (e) any other matter with respect to which byelaws may be made under this Act ;

but any such condition as aforesaid shall be of no effect if and so far as it is inconsistent with any byelaws so made which are for the time being in force.

- (4) A local authority, on receiving a trade effluent notice duly served on them, shall forthwith send a copy of the notice to any interested body, and the local authority shall not have power to take any further action under the preceding provisions of this section in relation to the notice, without the approval of the body or bodies (if any) to whom the local authority are required by this subsection to send a copy of the notice.
- (5) If, in the case of any trade premises—
 - (a) any trade effluent is discharged in contravention of this section, or without such consent (if any) as is necessary for the purposes of this Act, or
 - (b) any direction or condition given or imposed under this section is contravened,the occupier of the premises shall be guilty of an offence.

Section 4(4) of the Act of 1937 modifies this section, by exempting any liquid produced solely in the course of laundry work, but it should be noted that a trade effluent notice (see *post*, p. 118) is necessary, even though the consent of the local authority is not required, either because of an exemption under section 4, *supra*, or of byelaws made under section 5 (see *post*, p. 119). The "initial period" referred to in subsection (1) of section 2, *supra*, serves three purposes—

- i—it marks the period within which a direction under subsection (3) of the section may be issued by the local authority ;
- ii—it marks the period from the end of which such a direction will operate ; and
- iii—it marks the period, at the end of which a failure by the local authority to issue consent enables an appeal to be made in accordance with section 3 (see *post*, p. 118).

Reference must be made to any byelaws made under section 5 of the Act of 1937 (see *post*, p. 119) in order to ascertain whether the consent of the local authority is required. In any case, however, the local authority may give a direction, in accordance with subsection (3) of section 2, *supra*, to the effect that the effluent must not be discharged until a specified date. The exemptions in section 4 (see *post*, p. 119) do not apply to such a direction.

The expression "*interested body*" (see subsection (4), *supra*) means

- (a) where the local authority's sewer into which the trade effluent is, or is to be, received discharges into any sewer or sewage dis-

posal works of a joint sewerage authority or of another sewerage authority, that joint sewerage or other sewerage authority, or

- (b) where the local authority's said sewer has an outfall into any harbour or tidal water, or is connected directly or indirectly with any sewer or sewage disposal works having such an outfall, the harbour authority or conservancy authority having jurisdiction in respect of that harbour or tidal water ;

and for the purposes of this definition " harbour authority " and " conservancy authority " have the meanings respectively assigned to those expressions by section 742 of the Merchant Shipping Act, 1894(d) ;

Appeals to Minister.—Any person who is aggrieved by a direction of the local authority, or their failure or refusal to consent, or a condition attached to a consent, may appeal to the Minister of Health, and the Minister may annul the direction or modify it by substituting an earlier date for that specified in the direction as the date before which no trade effluent may be discharged, or may give the necessary consent, either unconditionally or subject to any such condition as he thinks fit, or may either annul any condition laid down by the local authority or substitute therefor any less stringent condition, or he may dismiss the appeal. The decision of the Minister on any such appeal is final, but he may at any stage, and must do so if directed, state a special case to the High Court on any question of law(e).

Exemptions.—It is not necessary to obtain the consent of the local authority in case of the discharge of trade effluent which was being lawfully discharged from the same premises into the same sewer at some time within the period of one year ending on 3rd March, 1937, provided that—

- (a) the quantity of the trade effluent discharged from the premises into the sewer on any one day does not exceed the maximum quantity thereof so discharged on any one day during the said period, and
- (b) the rate at which the trade effluent is discharged from the premises into the sewer is not higher than the highest rate at which it was so discharged during the said period, and
- (c) (where the trade effluent was at any time within the said period discharged into the sewer under an agreement between the local authority and the owner or occupier of the trade premises, being an agreement which was in force at the end of the said period but has thereafter ceased to be in force) the owner or occupier of those premises makes to the local authority, in accordance with the terms of the agreement, such payments (if any) in respect of the reception of the trade effluent into the sewer as he would have been obliged to make under that agreement if it were still in force.

(d) *Ibid.*

(e) *Ibid.*, sect. 3 ; *ibid.*, 698.

A similar exemption applies in the case of a sewer which has been closed in accordance with section 42 of the Act of 1936 (see *post*, p. 132)(f).

Byelaws.—A local authority may, and if required by the Minister of Health must, make byelaws with respect to the discharge of trade effluents in accordance with section 5 of the Act of 1937, *infra*.

*Section 5, Public Health (Drainage of Trade Premises) Act, 1937—
Byelaws of local authorities.*

- (1) A local authority may, and, if required by the Minister, shall, make byelaws (hereafter in this Act referred to as "trade effluent byelaws") with respect to the discharge of any trade effluent, or trade effluent of any particular nature or composition from trade premises into any public sewer of the local authority, and such byelaws may provide for all or any of the following matters, that is to say—
 - (a) for determining the period or periods of the day during which the trade effluent may be discharged from any trade premises into the sewer ;
 - (b) for requiring the exclusion from the trade effluent of all condensing water ;
 - (c) for requiring that, before the trade effluent enters the sewer, there shall be eliminated from the effluent any such constituent thereof as may be specified in the byelaws, being a constituent as to which the authority making the byelaws is satisfied that it would, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers—
 - (i) injure or obstruct those sewers, or make specially difficult or expensive the treatment or disposal of the sewage from the sewers, or
 - (ii) (where the trade effluent is to be, or is, discharged into a sewer having an outfall into any harbour or tidal water or into a sewer or sewage disposal works having such an outfall) cause or tend to cause injury or obstruction to the navigation on, or the use of, the said harbour or tidal water ;
 - (d) for determining the maximum quantity of the trade effluent which may, without the consent of the local authority, be discharged from any trade premises into the sewer on any one day, and the highest rate at which the trade effluent may, without such consent, be discharged from any trade premises into the sewer ;
 - (e) for regulating the temperature of the trade effluent at the time when it is discharged into the sewer, and for securing so far as reasonably practicable that the trade effluent, when so discharged, shall be neutral, that is to say, neither acid or alkaline ;

- (f) for requiring the several occupiers of trade premises from which the trade effluent is discharged into the sewer to pay to the local authority such charge for the reception of the trade effluent into the sewer, and for the disposal thereof, as may be specified in the byelaws, regard being had to the composition and volume of the trade effluent so discharged, and to any additional expense incurred or likely to be incurred by a sewerage authority in connection with the reception or disposal of the trade effluent ;
- (g) for the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take at any time samples of what is passing into the sewer from the premises ;
- (h) for the provision and maintenance of such meters as may be required to measure the volume of any trade effluent being discharged from the premises into the sewer, and for the testing of such meters.

Trade effluent byelaws providing for any of the matters mentioned in paragraphs (a) and (d) of this subsection may make different provision in relation to different descriptions of trade premises and in relation to different parts of the district of the local authority.

- (2) Nothing in any trade effluent byelaws, in so far as they provide for matters other than those specified in paragraphs (e), (g) and (h) of the preceding subsection, shall apply in relation to any discharge of trade effluent to which, by virtue of the last preceding section, the consent of the local authority is not necessary, and nothing in any trade effluent byelaws shall enable a local authority to make any charge for the reception into a sewer of any quantity of any trade effluent discharged from any particular trade premises, being a quantity which, by virtue of the last preceding section, could lawfully be discharged from those premises into the sewer without the consent of the local authority.
- (3) No trade effluent byelaws shall be of any effect until confirmed by the Minister and the provisions set out in the Schedule to this Act shall have effect in relation to the making and publication of such byelaws.
- (4) If any trade effluent byelaw is contravened or not complied with in the case of any premises, the occupier of the premises shall be guilty of an offence.
- (5) Where a local authority consider that the operation of any trade effluent byelaw made, or having effect as if made, by that authority would be unreasonable in relation to any particular case, they may, with the consent of the Minister, relax the requirements of the byelaw or dispense with compliance therewith :

Provided that the local authority shall give notice of any such proposed relaxation or dispensation to any interested bodies, to any persons whose names for the time being appear in the register to be kept by the local authority under paragraph 2 of the Schedule to this Act, and to such other persons, if any, as the Minister may direct, and the Minister shall not give his consent before the expiration of one month from the giving of the

notice, and, before giving his consent, shall take into consideration any objection which may have been received by him.

- (6) Any trade effluent byelaws shall cease to have effect on the expiration of ten years from the date on which they are made :

Provided that the Minister may by order extend the period during which any such byelaws are to remain in force.

The Minister of Health is empowered to make byelaws in case of default by a local authority and to revoke unreasonable byelaws(g). The Ministry of Health have issued model byelaws dealing with the exclusion of condensing waters, elimination of certain constituents, quantity of effluent which may be discharged without consent, temperature, acidity or alkalinity, payments, inspection chambers, manholes and meters(h).

Agreements between local authorities and traders.—Section 7 of the Act of 1937(j) enables a local authority to enter into an agreement with the owner or occupier of any trade premises for the reception and disposal of trade effluent, subject to payment by such person of such charges as the local authority may determine. Such an agreement must be approved by an interested body (see *ante*, p. 117), or the Minister may dispense with the necessity for such approval. Nothing in the Act or in any trade effluent byelaws affects any agreement with respect to any trade effluent duly made between a local authority and the owner or occupier of any trade premises before the commencement of the Act, or the coming into effect of the bye-laws, as the case may be. The Minister may determine or vary any agreement between sewerage authorities respecting the sewer of one authority communicating with the sewer or sewage disposal works of another authority, where, owing to the operation of the Act of 1937, it is desirable to do so.

Execution of works by local authorities for traders.—Where it is necessary, for compliance with the provisions of the Act, for a person to construct works, the local authority may do so on his behalf and recover the reasonable costs incurred, by instalments, with interest, if agreed by the parties(k).

Production of plans and furnishing of information to local authorities.—Section 9 of the Act of 1937(l) empowers a local authority to require the production of plans, etc., by the owner

(g) *Ibid*, sect. 6 ; *ibid*, 702.

(h) Model Byelaws, Ministry of Health, Series XXVIII.

(j) 30 Halsbury's Statutes 702.

(k) Sect. 8, Public Health (Drainage of Trade Premises) Act, 1937 ; *ibid*, 703.

(l) *Ibid*, 704.

or occupier of land or premises on or under, or from which, any trade effluent sewer, drain, etc., is situated or passes.

Power to take samples of trade effluents.—Any officer of the local authority is empowered to enter premises and take samples of trade effluents. The result of the analysis of the sample is admissible as evidence in any legal proceedings under the Act if the officer on taking the sample forthwith notifies the occupier of the trade premises of his intention to have the sample analysed, and divides the sample into three parts, duly signed and sealed, and—

- (a) delivers one part to the occupier of the trade premises ;
- (b) retains one part for future comparison ; and
- (c) if he thinks fit, submits one part to the analyst(m).

Further details as to trade and manufacturing effluents will be found in chapter 12 (see *post*, p. 282 *et seq.*).

Owners and occupiers outside district may drain to sewers.—Section 35 of the Act of 1936, *infra*, empowers owners and occupiers outside the area of a local authority, to drain to public sewers belonging to such authority, subject to the conditions detailed in the proviso to subsection (1).

Section 35, Public Health Act, 1936.—Use of public sewers by owners and occupiers without district.

- (1) Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer without the district of a local authority shall have the like rights with respect to drainage into the public sewers of that authority as he would have under the last preceding section if his premises or sewer were situate within their district, and the provisions of that section shall apply accordingly :

Provided that, without prejudice to their right under the last preceding section to prohibit the discharge of certain liquids or other matters into their sewers or into some of their sewers, or to refuse to permit a communication to be made on the ground of the defective construction or condition of a drain or sewer, and to require the drain or sewer to be laid open for inspection, the local authority may, in the case of a drain or sewer from premises outside their district, refuse to permit a communication to be made except upon such reasonable terms and conditions, including the making to them of a reasonable payment or reasonable periodical payments, as they think fit.

- (2) If a person is aggrieved by any terms or conditions which a local authority seek to impose under the preceding subsection, the reasonableness thereof may on his application be determined by a court of summary jurisdiction, or he may require it to be referred to arbitration.

- (3) Where a person avails himself of the provisions of this section, the local authority of the district in which his premises or sewer are or is situate may, if they think fit, defray, or contribute towards, any expenses incurred by him for the purpose, or any payment which he is required under this section to make to the other local authority.

Connection of drains with public sewers.—Subsection (2) of section 34 of the Act of 1936, *infra*, empowers an owner or occupier to break open streets for the purpose of connecting his drains with the public sewer. As to the special provisions relating to the breaking open of streets, see sections 279 to 281 of the Act of 1936 (see *ante*, p. 95).

Section 34(2), Public Health Act, 1936.—*Right of owners and occupiers within district to drain into public sewers.*

- (2) Subject to the provisions of Part XII of this Act with respect to the breaking open of streets, the owner or occupier of any premises may break open any street for the purpose of exercising his rights under this section and for the purpose of examining, repairing and renewing any drain or private sewer draining his premises into a public sewer.

Before any person may make a connection to a public sewer the provisions of subsection (3) of section 34, *infra*, must be complied with and proper notice of the proposed work submitted to the local authority for their approval. A local authority are empowered by section 61(1) (ii) (h) of the Act of 1936 (see *ante*, p. 9) to make byelaws governing the making of communications between drains and sewers.

Section 34(3), Public Health Act, 1936.—*Right of owners and occupiers within district to drain into public sewers.*

- (3) A person desirous of availing himself of the foregoing provisions of this section shall give to the local authority notice of his proposals, and at any time within twenty-one days after receipt thereof, the authority may by notice to him refuse to permit the communication to be made, if it appears to them that the mode of construction or condition of the drain or sewer is such that the making of the communication would be prejudicial to their sewerage system, and for the purpose of examining the mode of construction and condition of the drain or sewer they may, if necessary, require it to be laid open for inspection : Provided that any question arising under this subsection between a local authority and a person proposing to make a communication as to the reasonableness of any such requirement of the local authority, or of their refusal to permit a communication to be made, may on the application of that person be determined by a court of summary jurisdiction.

Subject to compliance with the requirements of subsection (1) of section 34 (*ante*, p. 115), an owner has an absolute right of drainage to a public sewer. Even though additional con-

nections to the sewer would lead to nuisance as a result of the discharge of sewage, it was held that the local authority were not entitled to an injunction restraining the making of the proposed connections⁽ⁿ⁾.

It should be noted that no person has the right to trespass upon land for the purpose of connecting his drains with the public sewer^(o). Sections 37 (see *post*, p. 125) and 39 (see *post*, p. 128) of the Act of 1936, relating to the drainage of new and existing buildings respectively, only empower a local authority to enforce such drainage if, *inter alia*, the intervening land through which the drain must be laid, is land the person is entitled to enter for that purpose. Although an owner may construct an intercepting chamber on a drain in a public footway when connecting his drains to the public sewer, he is not entitled to break up the pavement for the purpose of providing such a chamber on an existing drain^(p).

Where an owner or occupier of premises serves upon a local authority notice of his intention to connect his drain with a public sewer, the authority may themselves make the necessary connection in accordance with the provisions of section 36 of the Act of 1936, *infra*.

Section 36, Public Health Act, 1936.—Right of local authority to undertake the making of communications with public sewers.

- (1) Where under either of the two last preceding sections a person gives to a local authority notice of his proposal to have his drains or sewer made to communicate with a public sewer of that authority, the authority may, within fourteen days after the receipt of the notice or, if any question arising under the notice requires to be determined by a court of summary jurisdiction or by an arbitrator, within fourteen days after the decision of that question, give notice to that person that they intend themselves to make the communication and, if after such a notice has been given to him, he proceeds himself to make the communication, he shall be liable to a fine not exceeding fifty pounds.
- (2) Where a local authority have given such a notice as aforesaid, they shall have all such rights in respect of the making of the communication as the person desiring it to be made would have, but it shall not be obligatory on them to make the communication until the cost of the work, as estimated by their surveyor, has been paid to them, or security for payment has been given to their satisfaction.
- (3) If any payment so made to the local authority exceeds the expenses reasonably incurred by them in the execution of the work, the excess shall be repaid by them and, if and so far as those expenses are not covered by the payment, if any,

(n) *Brown v. Dunstable Corpn.*, [1899] 2 Ch. 378; 41 Digest 42, 306

(o) *Russell v. Knight* (1894), *Times*, May 9th.

(p) *Att.-Gen. v. Ashby* (1907), 71 T.P. 387; 26 Digest 326, 590.

made to them, they may recover the expenses, or the balance thereof, from the person for whom the work was done.

- (4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

If a local authority do not avail themselves of the powers contained in section 36, *supra*, the person making the connection to the sewer must, before commencing the work, give reasonable notice to a person properly authorised by the local authority, and afford such person all reasonable facilities for superintending the actual work(*q*).

If any person contravenes the provisions of section 34, *ante*, pp. 115, 123, in respect of the connection of a drain to a public sewer, a penalty is incurred, or the local authority may close any communication made and recover the cost from the person making the connection(*a*).

DRAINAGE OF NEW BUILDINGS.

Section 37 of the Act of 1936, *infra*, enables a local authority to reject the plans of a new building or an extension of an existing building if they are satisfied that proper means of drainage will not be provided.

Section 37, Public Health Act, 1936.—New buildings to be provided with any necessary drains, etc.

- (1) Where plans of a building or of an extension of a building are, in accordance with building byelaws, deposited with a local authority, the authority shall reject the plans unless either the plans show that satisfactory provision will be made for the drainage of the building or of the extension, as the case may be, or the authority are satisfied that in the case of the particular building or extension they may properly dispense with any provision for drainage.

In this section the expression "drainage" includes the conveyance, by means of a sink and any other necessary appliance, of refuse water and the conveyance of rain water from roofs.

- (2) Any question arising under the preceding subsection between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether provision for drainage may properly be dispensed with, or whether any provision for drainage proposed to be provided ought to be accepted by the authority as satisfactory, may on the application of that person be determined by a court of summary jurisdiction.
- (3) A proposed drain shall not be deemed to be a satisfactory drain for the purposes of this section unless it is proposed to be made, as the local authority, or on appeal a court of summary jurisdiction, may require, either to connect with a sewer, or to discharge into a cesspool or into some other place :

(*q*) Sect. 34(4), Public Health Act, 1936 ; 29 Halsbury's Statutes 350.

(*a*) *Ibid*, sect. 34(5) ; 29 Halsbury's Statutes 350.

Provided that, subject to the provisions of the next succeeding subsection, a drain shall not be required to be made to connect with a sewer unless—

- (a) that sewer is within one hundred feet of the site of the building or, in the case of an extension, the site either of the extension or of the original building, and is at a level which makes it reasonably practicable to construct a drain to communicate therewith, and, if it is not a public sewer, is a sewer which the person constructing the drain is entitled to use; and
 - (b) the intervening land is land through which that person is entitled to construct a drain.
- (4) Notwithstanding anything in proviso (a) to the last preceding subsection, a drain may be required to be made to connect with a sewer which is not within the distance mentioned in that proviso, but is otherwise such a sewer as is therein mentioned, if the authority undertake to bear so much of the expenses reasonably incurred in constructing, and in maintaining and repairing, the drain as may be attributable to the fact that the distance of the sewer exceeds the distance so mentioned.
- If any question arises as to the amount of any payment to be made to a person under this subsection, that question may on his application be determined by a court of summary jurisdiction, or he may require it to be referred to arbitration.

Byelaws may be made by a local authority in accordance with section 61 of the Act of 1936 (see *ante*, p. 9), dealing, *inter alia*, with the drainage of buildings, and such byelaws should specify in some detail the method of construction and type of materials to be used.

It will be observed that a local authority are only entitled to require the drains of a new building to be connected to a sewer if—

- (1) the sewer is within one hundred feet of the site of the building; and
- (2) the sewer is at a level which makes it possible for the drain to be connected to it; and
- (3) the sewer is one which the person constructing the drain is entitled to use; and
- (4) the intervening land is land through which such person is entitled to lay a drain.

In deciding as to the suitability of a proposed drain, a local authority are not entitled to consider what is desirable for their district as a whole but only what is suitable for the particular building in question (b). It has been held that an authority are empowered to require a separate drain for each house, even though the houses are semi-detached or form one block (c). In providing a house with proper drainage,

(b) *Matthews v. Strachan*, [1901] 2 K.B. 540; 41 Digest 37, 270.

(c) *Woodford U.D.C. v. Stark* (1909) 88 L.T. 685; 41 Digest 37, 271.

an owner is not entitled to construct a drain through land or across a road belonging to some other person, without the consent of that person(*d*).

In cases where a local authority consider that it would be more economical or advantageous to drain two or more buildings in combination, than to have separate drains for each building, they may, in accordance with section 38 of the Act of 1936, *infra*, direct accordingly.

Section 38, Public Health Act, 1936.—Drainage of buildings in combination.

- (1) Where a local authority might under the last preceding section require each of two or more buildings to be drained separately into an existing sewer, but it appears to the authority that those buildings may be drained more economically or advantageously in combination, the authority may, when the drains of the buildings are first laid, require that the buildings be drained in combination into the existing sewer by means of a private sewer to be constructed either by the owners of the buildings in such manner as the authority may direct, or, if the authority so elect, by the authority on behalf of the owners :

Provided that a local authority shall not, except by agreement with the owners concerned, exercise the powers conferred by this subsection in respect of any building for the drainage of which plans have been previously passed by them.

- (2) A local authority who make such a requirement as aforesaid shall fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned, or, in a case in which the distance of the existing sewer from the site of any of the buildings in question is or exceeds one hundred feet, the proportions in which those expenses are to be borne by the owners concerned and the local authority, and shall forthwith give notice of their decision to each owner affected.

An owner aggrieved by the decision of a local authority under this subsection may appeal to a court of summary jurisdiction ; but, subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer shall be borne in the proportions so fixed, and those expenses, or, as the case may be, contributions thereto, may be recovered accordingly by the persons, whether the local authority or owners, by whom they were incurred in the first instance.

- (3) A sewer constructed by a local authority under this section shall not be deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the authority, or by reason of the fact that some part of those expenses is borne by them.
- (4) So much of any local Act as empowers a local authority to require in certain cases the construction of a combined drain is hereby repealed.

DRAINAGE OF EXISTING BUILDINGS.

The powers of a local authority with regard to the provision of proper means of drainage at existing buildings, are contained in section 39, *infra*.

Section 39, Public Health Act, 1936.—Provisions as to drainage, etc., of existing buildings.

- (1) If it appears to a local authority that in the case of any building—

- (a) satisfactory provision has not been, and ought to be, made for drainage as defined in section thirty-seven of this Act; or
- (b) any cesspool, private sewer, drain, soil-pipe, rain water pipe, spout, sink or other necessary appliance provided for the building, is insufficient or, in the case of a private sewer or drain communicating directly or indirectly with a public sewer, is so defective as to admit subsoil water; or
- (c) any cesspool or other such work or appliance as aforesaid provided for the building is in such a condition as to be prejudicial to health or a nuisance; or
- (d) any cesspool, private sewer or drain formerly used for the drainage of the building, but no longer used therefor, is prejudicial to health or a nuisance,

they shall by notice require the owner of the building to make satisfactory provision for the drainage of the building, or, as the case may be, require either the owner or the occupier of the building to do such work as may be necessary for renewing, repairing or cleansing the existing cesspool, sewer, drain, pipe, spout, sink or other appliance, or for filling up, removing or otherwise rendering innocuous the disused cesspool, sewer or drain.

The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this subsection.

- (2) Subsections (3) and (4) of section thirty-seven of this Act shall apply in relation to any drain which a local authority require to be constructed under this section as they apply in relation to any such proposed drain as is mentioned in that section.
- (3) Subject as hereinafter provided, the provisions of subsection (1) of this section, so far as they empower a local authority to take action in such cases as are mentioned in paragraphs (a) and (b) of the subsection, shall not apply in relation to a building which belongs to any statutory undertakers and is held or used by them for the purposes of their undertaking:

Provided that the exemption conferred by this subsection shall not extend to houses, or to buildings used as offices or show-rooms, other than buildings so used which form part of a railway station.

It should be noted that the local authority must be satisfied (as in the case of other matters dealt with under the Public Health Act) and it is not sufficient for an officer of the authority

to serve a notice and have such action confirmed later by the local authority(*e*). An authority may, however, delegate its powers, either to a committee in accordance with section 85 of the Local Government Act, 1933 (*f*), or to a sub-committee in accordance with section 273 of the Act of 1936 (see *ante*, p. 33).

It was held under the repealed section 23 of the Public Health Act, 1875(*g*), that an authority were not empowered to require the alteration of a drainage system which was sufficient for the proper drainage of the premises concerned, or to require the abolition of a cesspool and the connection of the drain to the sewer(*h*), and the same restriction will undoubtedly apply in the case of section 39, *supra*. Similarly, an owner cannot be compelled to provide new drains so as to connect to a new sewer provided by the local authority, if the existing drains are satisfactory(*i*), but the authority may alter the drainage system at their own expense as provided by section 42 of the Act of 1936 (see *post*, p. 132).

In determining whether premises are within one hundred feet of the sewer, the distance must be measured from some part of the building itself and not from the curtilage(*j*), and the distance must be taken in a straight line "as the crow flies"(*k*). The expression "site of the building" appears to mean the actual piece of land on which the house itself stands(*l*). In the absence of a properly covered cesspool, the owner or occupier of premises may be required to provide one(*m*).

The provision in paragraph (b) of subsection (1) of section 39, *supra*, relating to a drain, etc., so defective as to admit subsoil water, is new. It is a little difficult to imagine exactly how it will be possible to prove to the satisfaction of the court, when a drain is in this condition. Although power is given by section 48 of the Act of 1936 (see *post*, p. 132) to test and examine drains, a test by water under pressure is definitely prohibited. It is doubtful whether a drain defective on the smoke test, would, of necessity, in every case, be so defective as to *admit* subsoil water.

(*e*) *St. Leonard's, Shoreditch, Vestry v. Holmes* (1885), 50 J.P. 132; 41 Digest 41, 299.

(*f*) 26 Halsbury's Statutes 352.

(*g*) 13 Halsbury's Statutes 635.

(*h*) *Att.-Gen. v. Clerkenwell Vestry*, [1891] 3 Ch. 527; 41 Digest 42, 304.

(*i*) *St. Martins in the Field Vestry v. Ward*, [1897] 1 Q.B. 40; 41 Digest 26, 204.

(*j*) *Meyrick v. Pembroke Corpn.* (1912), 76 J.P. 365; 41 Digest 36, 267.

(*k*) *Moufflet v. Cole* (1872), L.R. 8 Ex. 32; 44 Digest 147, 150.

(*l*) *Blashill v. Chambers* (1884), 14 Q.B.D. 479; 38 Digest 166, 111.

(*m*) *Chelmsford Corpn. v. Bradbridge*, [1916] 2 K.B. 38; 41 Digest 37, 263.

As to the materials to be used and the mode of construction, a local authority may make byelaws under section 61 of the Act of 1936 (see *ante*, p. 9), relating to the drainage of buildings, including the inspection and testing of drains and sewers. A local authority have a discretion in deciding on the details of the construction of a drain and if such discretion is properly exercised it will not be interfered with⁽ⁿ⁾. It has been held that, at the discretion of the local authority, a drain may be laid either in or on the ground, or partly in and partly above ground^(o).

It will be seen that notices in respect of drainage work must be served upon the owner but in respect of other matters either upon the owner or the occupier of the premises, and in making a decision, a local authority should be guided as to the best person to comply with the notice or alternatively the person responsible for the conditions necessitating the service of the notice.

The definition of "drainage," in section 37(1) of the Act of 1936 (see *ante*, p. 125), includes a sink for refuse water and also pipes for the conveyance of roof water. This definition applies to section 39, *ante*, p. 128, and notices may be served under that section where premises are without a sufficient sink or facilities for dealing with rain water.

In cases where an owner or occupier of premises carries out work to a conduit under legal compulsion, under the belief that it is a drain, and subsequently it is found to be a sewer, he is entitled to recover the expenses incurred from the local authority^(p), but the work must be carried out under compulsion, an informal intimation from the local authority under section 3 of the Public Health (London) Act, 1891^(q), being insufficient to entitle the owner to recover his costs^(r). If, however, such an intimation notice is complied with under protest, the expenses may be recovered^(s). In a case^(t) under the Public Health Act, 1875, an owner was enabled to recover

(n) As to materials to be used, see *Austin v. St. Mary, Lambeth, Vestry* (1858), 27 L.J. (Ch.) 388, 677; 41 Digest 38, 277; and as to size of drain see *Woodward v. Cotton* (1834), 1 Cr. M. & R. 44.

(o) *Morris v. Mynyddislwyn U.D.C.* [1917], 2 K.B. 309; Digest Supp.

(p) *Andrew v. St. Olave's Board of Works*, [1898] 1 Q.B. 775; 36 Digest 234, 737.

(q) 11 Halsbury's Statutes 1027.

(r) *Proctor v. Islington Metropolitan Borough* (1903), 67 J.P. 164; 36 Digest 231, 713.

(s) *Wilson's Music, etc., Co. v. Finsbury B.C.*, [1908] 1 K.B. 563; 36 Digest 232, 718.

(t) *North v. Walthamstow U.D.C.* (1898), 67 L.J.Q.B. 972; 36 Digest 234, 738.

his expenses incurred in abating a nuisance in compliance with a notice from the local authority, although it was not a statutory notice, on the grounds that it was necessary to deal with the nuisance quickly and that the work was done under pressure from the local authority practically equivalent to compulsion. In a similar case^(u), but where the same urgency regarding the execution of the work did not exist, the court ruled that the owner was not entitled to recover his costs.

Soilpipes and ventilating shafts.—The provisions of section 40 of the Act of 1936, *infra*, relating to soilpipes and ventilating shafts, apply equally in respect of new and existing buildings. Where a contravention of the section is discovered, notice may be served by the local authority, either upon the owner or the occupier of the premises, and the usual right of appeal is provided (see *ante*, p. 64).

Section 40, Public Health Act, 1936.—Provisions as to soil pipes and ventilating shafts.

- (1) No pipe for conveying rain water from a roof shall be used for the purpose of conveying the soil or drainage from any sanitary convenience.
 - (2) The soil pipe from every watercloset shall be properly ventilated.
 - (3) No pipe for conveying surface water from any premises shall be permitted to act as a ventilating shaft to any drain or sewer conveying foul water.
 - (4) If it appears to the local authority that there is on any premises a contravention of any provision of this section, they may by notice require the owner or the occupier of those premises to execute such work as may be necessary to remedy the matter.
- The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this subsection.

Paving and drainage of yards.—Section 56 of the Act of 1936, *infra*, empowers a local authority to require the proper paving and drainage of any court, yard, or passage, whether used in common by the occupiers of two or more houses, or not.

Section 56, Public Health Act, 1936.—Yards and Passages to be paved and drained.

- (1) If any court or yard appurtenant to, or any passage giving access to, a house is not so formed, flagged, asphalted, or paved, or is not provided with such works on, above, or below its surface, as to allow of the satisfactory drainage of its surface or subsoil to a proper outfall, the local authority may by notice require the owner of the house to execute all such works as may be necessary to remedy the defect.

(u) *Ellis v. Bromley R.D.C.* (1899), 81 L.T. 224; 41 Digest 21, 159.

- The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this subsection.
- (2) The foregoing provisions of this section shall apply in relation to any court, yard or passage which is used in common by the occupiers of two or more houses, but is not a highway repairable by the inhabitants at large.
 - (3) Any byelaws made by a local authority, whether under section twenty-three of the Public Health Acts Amendment Act, 1890, or under a local Act, with respect to the paving of yards and open spaces in connection with houses shall cease to have effect, and so much of any local Act as authorises the making of such byelaws is hereby repealed.

Notice of intention to carry out drainage work.—In any borough or urban district, and in a rural district or contributory place in which section 39 of the Public Health Act, 1925^(x), was in force before the 1st of October, 1937, no person may repair, reconstruct, or alter the course of any drain which communicates with a sewer, or with a cesspool or any other receptacle for drainage, except in case of emergency, without giving the local authority at least twenty-four hours' notice of his intention to do so. Where work is carried out without notice as a case of emergency, it must not be covered over until the expiration of twenty-four hours from the giving of notice to the local authority. During the progress of any work specified above, free access for inspection purposes must be afforded to the sanitary inspector, surveyor, or other authorised officer of the local authority. These provisions do not apply in the case of any drain or sewer constructed or belonging to a railway company which runs under, across or along the railway, or to a drain or sewer belonging to a dock undertaking which is situated in or on land which is held or used by such undertakers for dock purposes^(a),

Alteration of drainage system.—A local authority are empowered by section 42 of the Act of 1936^(b), to alter any drain or sewer communicating with a public sewer or a cesspool, at their own expense, where it is desirable to do so on the grounds that the drain or sewer, although sufficient and suitable for the premises concerned, is not adapted to the general drainage system of the district, or is otherwise objectionable. Before doing so however, the authority must provide alternative means of drainage which will be equally effective for the premises drained. Before commencing

(x) 13 Halsbury's Statutes 1132.

(a) Sect. 41, Public Health Act, 1936; 29 Halsbury's Statutes 356.

(b) 29 Halsbury's Statutes 357.

any work under this section, notice must be given to the owner of the premises, who has a right of appeal to a court of summary jurisdiction.

Occupiers to permit works to be executed.—Section 289 of the Act of 1936, *infra*, requires an occupier of premises to permit the execution of any work authorised to be done by the Public Health Act.

Section 289, Public Health Act, 1936.—Power to require occupier to permit works to be executed by owner.

If on a complaint made by the owner of any premises, it appears to a court of summary jurisdiction that the occupier of those premises prevents the owner from executing any work which he is by or under this Act required to execute, the court may order the occupier to permit the execution of the work.

Local authority may do work by agreement on behalf of owner or occupier.—A local authority are empowered by section 275 of the Act of 1936(c), by agreement with the owner or occupier of any premises, to carry out at the expense of such owner or occupier, any work which they have required him to do in accordance with any of the provisions of the Act, or any work in connection with the construction, laying, alteration or repair of a sewer, drain or communication pipe for water. For the purpose of the execution of such work, the local authority have all the rights of the owner or occupier. Any expenses incurred by the local authority as a result of an agreement made under section 275, *supra*, may be recovered from the owner or occupier in accordance with the provisions of section 291 of the Act of 1936 (see *ante*, p. 74).

EXAMINATION AND TESTING OF DRAINS.

Section 48 of the Act of 1936, *infra*, empowers a local authority to examine drains, including opening up the ground and applying a test, other than a test by water under pressure.

Section 48, Public Health Act, 1936.—Power of local authority to examine and test drains, etc., believed to be defective.

- (1) Where it appears to a local authority that there are reasonable grounds for believing that a sanitary convenience, drain, private sewer or cesspool is in such a condition as to be prejudicial to health or a nuisance, or that a drain or private sewer communicating directly or indirectly with a public sewer is so defective as to admit subsoil water, they may examine its condition, and for that purpose may apply any test, other than a test by water under pressure, and, if they deem it necessary, open the ground.
- (2) If on examination the convenience, drain, sewer or cesspool is

found to be in proper condition, the authority shall, as soon as possible, reinstate any ground which has been opened by them and make good any damage done by them.

Although the section does not require the local authority to have before them a report of any of their officers before becoming satisfied as to the necessity for the examination or test, as was the case with the repealed section 41, Public Health Act, 1875(*d*), it is desirable that such a report should be submitted.

It will be observed that compared with the repealed section 41, *supra*, and section 45 of the Public Health Acts Amendment Act, 1907(*e*), the present section does not provide for notice being given, either to the owner or the occupier, of the premises, of the intention to carry out the inspection or testing of the drains, and it is not necessary to obtain the consent of either party. Under section 287 of the Act of 1936 (see *ante*, p. 52), however, a duly authorised officer (including in this case, the sanitary inspector(*f*)) is empowered to enter premises, after giving twenty-four hours' notice to the occupier, in order to carry out any of the functions of a local authority under the Act. Although therefore the service of notice prior to entry is not included in section 48, *supra*, it is necessary to do so, unless the occupier gives consent, but such consent relates to entry only and is not necessary for the inspection and testing of the drain. A form of notice suitable for the purpose is given in chapter 4 (see *ante*, p. 55).

If entry is refused after the service of notice as above, a justice of the peace may issue a warrant authorising the sanitary inspector or other authorised officer to enter the premises, if need be by force. A justice can only issue a warrant where he is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry. Every warrant issued by a justice in accordance with these provisions remains in force until the purpose for which the entry is necessary has been satisfied(*g*). If any person obstructs an officer of a local authority in the execution of the Public Health Act, or a warrant issued thereunder, he is liable to a penalty(*h*).

(*d*) 13 Halsbury's Statutes 642.

(*e*) 13 Halsbury's Statutes 928.

(*f*) Sect. 343, Public Health Act, 1936; *ante*, p. 50.

(*g*) *Ibid*, sect. 287, *ante*, p. 52.

(*h*) *Ibid*, sect. 288; 29 Halsbury's Statutes 509.

CESSPOOLS.

Section 37 (see *ante*, p. 125) and section 39 (see *ante*, p. 128) of the Act of 1936, require buildings to be provided with proper means of drainage, connected with a sewer or to discharge into a cesspool or into some other place. A local authority are not entitled to require the drains of a building to be connected to a sewer, if the latter is more than one hundred feet from the site of the building, or if the intervening land, between the premises and the sewer, is not land through which the owner of the premises is entitled to construct a drain.

A cesspool includes a settlement tank or other tank for the reception or disposal of foul matter from buildings⁽ⁱ⁾, but neither it nor the pipe running into it is a "sewer" within the definition in section 343 of the Act of 1936 (see *ante*, p. 87) ^(k); but it has been held that by the construction of a sewer leading out of it, the cesspool becomes a mere "catchpit" and so part of the sewer itself^(l).

Where it is impossible to connect the drains of a building to the sewer, it is the general custom to discharge them into a cesspool, or, in the case of large buildings, a small sewage purification plant. Building plans submitted in accordance with building byelaws must be rejected unless they show that satisfactory provision for drainage will be made and this may be done by the provision of a cesspool^(m).

Byelaws relating to cesspools.—Every local authority is empowered by section 61 of the Act of 1936 (see *ante*, p. 9), to make byelaws respecting, *inter alia*, cesspools and other means for the reception or disposal of foul matter in connection with buildings.

Byelaws relating to cesspools usually require them to be constructed not less than fifty feet from a dwelling-house, or public building, or any buildings in which any person is employed in any manufacture, trade or business, and at least sixty feet from any well, spring or stream of water used or likely to be used by man for drinking or domestic purposes, or the manufacture or preparation of articles of food or drink for human consumption, or for the cleansing of vessels with a view to the preparation or sale of such articles, and otherwise,

(i) *Ibid*, sect. 90; *ibid*, 392.

(k) *Sutton v. Norwich Corpn.* (1858), 22 J.P. 353; 41 Digest 3, 1.

(l) *Pakenham v. Ticehurst R.D.C.* (1903), 67 J.P. 448; 41 Digest 9, 64.

(m) Sect. 37, Public Health Act, 1936; 29 Halsbury's Statutes 352; and see *ante*, p. 125.

in such a position as not to render any such water liable to pollution. The cesspool must be constructed so as to afford ready means of access for cleansing and emptying purposes, without the contents having to be carried through a dwelling-house, public building or any building in which any person is employed in any manufacture, trade or business. The cesspool must not communicate with any sewer, and must be so constructed as to be impervious to liquid either from the outside or the inside, and if constructed of brickwork it must be rendered inside with cement and sand in suitable proportions or properly asphalted, and if constructed in a soil liable to be waterlogged it must be backed with not less than nine inches of well-puddled clay. Finally, cesspools must be properly arched or otherwise properly covered over⁽ⁿ⁾. It will be observed that the byelaws definitely require cesspools to be impervious.

Overflowing and leaking cesspools.—Section 50 of the Act of 1936, *infra*, empowers a local authority to serve notice in respect of an overflowing or leaking cesspool, requiring the person responsible to take adequate steps to deal with the matter.

Section 50, Public Health Act, 1936.—Overflowing and leaking cesspools.

- (1) If the contents of any cesspool soak therefrom or overflow, the local authority may by notice require the person by whose act, default or sufferance the soakage or overflow occurred or continued to execute such works, or to take such steps by periodically emptying the cesspool or otherwise, as may be necessary for preventing the soakage or overflow :

Provided that this subsection shall not apply in relation to the effluent from a properly constructed tank for the reception and treatment of sewage, if that effluent is of such a character, and is so conveyed away and disposed of, as not to be prejudicial to health or a nuisance.

- (2) In so far as a notice under this section requires a person to execute works, the provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to the notice.
- (3) In so far as such a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor :

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements.

(n) Ministry of Health, Model Byelaws—Buildings, 1937. Byelaw No. 115.

Rooms over cesspools.—It is illegal, under section 49 of the Act of 1936, *infra*, for any room over, *inter alia*, a cesspool, to be used as a living room, sleeping room, or workroom.

Section 49, Public Health Act, 1936.—*Rooms over closets of certain types, or over ashpits, etc., not to be used as living, sleeping or work rooms.*

- (1) A room which, or any part of which, is immediately over a closet, other than a watercloset or earthcloset, or immediately over a cesspool, midden or ashpit, shall not be occupied as a living room, sleeping room or workroom.
- (2) Any person who, after seven days' notice from the local authority, occupies any room in contravention of the provisions of this section, or who permits any room to be so occupied, shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

Examination of cesspools.—A local authority are empowered by section 48 of the Act of 1936 (see *ante*, p. 133), to examine any cesspool where it appears to them that there are reasonable grounds for believing it to be in such a condition as to be prejudicial to health or a nuisance. If the cesspool is found to be in proper condition, the authority must reinstate any ground and make good any damage done by them as soon as possible.

Cleansing of cesspools.—A local authority are empowered by section 72 of the Act of 1936 (see *post*, p. 184) to cleanse cesspools, either in the whole or a part of their district and they may be required to do so by the Minister of Health. They may by resolution discontinue to do so, provided they were not required to do so in the first place as a result of a requisition from the Minister of Health (see *post*, p. 184). In such a case the authority must obtain the consent of the Minister to the rescission of the resolution. Having undertaken to cleanse cesspools, a local authority cannot refuse to do so in any particular case without a reasonable excuse. It was held that where an authority had agreed to empty cesspools free of charge every three months, they had a reasonable excuse for not doing so more frequently without payment(o). A local authority may undertake in individual cases to cleanse cesspools which they are under no obligation to cleanse or to carry out such cleansing more frequently than they are required to do, and in such cases they are empowered to charge for such services any amount they may think fit(p). Where a local

(o) *Leck v. Epsom R.D.C.*, [1922] 1 K.B. 383 ; 38 Digest 237, 660.

(p) Sect. 74, Public Health Act, 1936 ; 29 Halsbury's Statutes 383.

authority do not themselves undertake the cleansing of cesspools they may make byelaws requiring the *occupiers* of premises to do so^(q). Such byelaws usually require the cesspools to be emptied once at least in every six months. Full details as to public cleansing will be found in chapter 8 (see *post*, p. 177 *et seq*).

(q) *Ibid*, sect. 72(4) ; *ibid*, 382.

CHAPTER 6.

SANITARY CONVENIENCES.

The provision of proper sanitary conveniences is dealt with in Part II of the Act of 1936. Section 90(1) of that Act(a) defines, *inter alia*, the following terms:—

- “ closet ” includes privy ;
- “ earthcloset ” means a closet having a moveable receptacle for the reception of faecal matter and its deodorisation by the use of earth, ashes or chemicals, or by other methods ;
- “ sanitary conveniences ” means closets and urinals ;
- “ watercloset ” means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action.

PROVISION OF CLOSET ACCOMMODATION FOR NEW BUILDINGS.

Local authorities are empowered by section 43 of the Act of 1936, *infra*, to reject the plans of a building, unless provision is shown for sufficient and satisfactory closet accommodation, or the authority are satisfied that in any particular case they may properly dispense with the provision of such accommodation.

Section 43, Public Health Act, 1936.—Closet accommodation to be provided for new buildings.

- (1) Where plans of a building or of an extension of a building are, in accordance with building byelaws, deposited with a local authority, the authority shall reject the plans unless either the plans show that sufficient and satisfactory closet accommodation consisting of one or more waterclosets or earthclosets, as the authority may approve, will be provided, or the authority are satisfied that in the case of the particular building or extension they may properly dispense with the provision of closet accommodation :

Provided that—

- (i) unless a sufficient water supply and sewer are available, the authority shall not reject the plans on the ground that the proposed accommodation consists of or includes an earthcloset or earthclosets ; and
- (ii) if the plans show that the proposed building or, as the case may be, extension is likely to be used as a factory,

workshop or workplace in which persons of both sexes will be employed, or will be in attendance, the authority shall reject the plans, unless either the plans show that sufficient and satisfactory separate closet accommodation for persons of each sex will be provided, or the authority are satisfied that in the circumstances of the particular case they may properly dispense with the provision of such separate accommodation.

- (2) Any question arising under this section between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether—
- (a) the provision of closet accommodation, or, as the case may be, the provision of separate closet accommodation for persons of each sex, may properly be dispensed with ; or
 - (b) the closet accommodation proposed to be provided is sufficient and satisfactory or, as the case may be, sufficient and satisfactory for persons of either sex ; or
 - (c) the provision of an earthcloset in lieu of a watercloset should in any particular instance be approved,
- may on the application of that person be determined by a court of summary jurisdiction.

It will be seen that the section applies to the plans of any building, and is not confined to plans of houses, but the local authority are empowered to waive the requirement as to the provision of closet accommodation if they consider it reasonable to do so. In effect this means that each proposed building must be considered on its merits, the authority being given discretion in the matter, subject to the right of appeal to the court provided by subsection (2), *supra*. If in their opinion it is desirable to do so, an authority may require the provision of more than one closet for any particular building.

The provision of a watercloset can only be insisted upon where there is a sufficient water supply and sewer available, otherwise the local authority must accept an approved earthcloset. Subsection (6) of section 90 of the Act of 1936, *infra*, indicates when a building or proposed building shall be deemed to have a sewer available.

Section 90(6), Public Health Act, 1936.—Interpretation of Part II.

- (6) For the purposes of this Part of this Act, a building or proposed building shall not be deemed to have a sewer available unless—
- (a) there is within one hundred feet of the site of the building or proposed building, and at a level which makes it reasonably practicable to construct a drain to communicate therewith, a public sewer or other sewer which the owner of the building or proposed building is, or will be, entitled to use, and
 - (b) the intervening land is land through which he is entitled to construct a drain ;
- and shall not be deemed to have a sufficient water supply available unless it has a sufficient supply of water laid on, or unless

such a supply can be laid on to it from a point within one hundred feet of the site of the building or proposed building, and the intervening land is land through which the owner of the building or proposed building is, or will be, entitled to lay a communication pipe :

Provided that, for the purposes of this definition, the limit of one hundred feet shall not apply, if the local authority undertake to bear so much of the expenses reasonably incurred in constructing, and in maintaining and repairing, a drain to communicate with a sewer or, as the case may be, in laying, and in maintaining and repairing, a pipe for the purpose of obtaining a supply of water, as may be attributable to the fact that the distance of the sewer, or of the point from which a supply of water can be laid on, exceeds one hundred feet.

The power to reject building plans is a very useful one and ensures that an owner or builder is aware of the requirements of the local authority before the building commences. Moreover every local authority are required to make byelaws for regulating, *inter alia*, sanitary conveniences in connection with buildings (see *ante*, p. 9), and these byelaws will deal with the type of conveniences to be fixed in new buildings, so that there should be no doubt or confusion in the minds of any owner or builder as to the kind of sanitary conveniences which will be approved in any particular district. Appeals to the court, as provided by subsection (2) of section 43, *ante*, p. 140, will most likely arise on questions as to the necessity for closet accommodation in certain buildings, and the provision of separate accommodation for each sex.

BUILDINGS HAVING INSUFFICIENT OR DEFECTIVE CLOSET ACCOMMODATION.

The provision of proper closet accommodation to existing buildings is dealt with in sections 44 and 45 of the Act of 1936. The former section deals with buildings without sufficient closet accommodation or accommodation which cannot be made sufficient without reconstruction, whilst the latter section deals with the case of closets which are in an unsatisfactory state but can be put right without reconstruction.

Section 44 of the Act of 1936, *infra*, requires a local authority to serve notice upon the owner of any building which is without sufficient closet accommodation or where the closets existing are in such a state as to require reconstruction.

Section 44, Public Health Act, 1936.—Buildings having insufficient closet accommodation, or closets so defective as to require reconstruction.

(1) If it appears to a local authority—

(a) that any building is without sufficient closet accommodation; or

- (b) that any closets provided for or in connection with a building are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition,

the authority shall by notice to the owner of the building require him to provide the building with such closets or additional closets, or such substituted closets, being in each case either waterclosets or earthclosets, as may be necessary :

Provided that, unless a sufficient water supply and sewer are available, the authority shall not require the provision of a watercloset except in substitution for an existing watercloset.

- (2) The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this section.
- (3) This section shall not apply to a shop to which the Shops Act, 1934, applies, or to a factory or workshop to which section nine of the Factory and Workshop Act, 1901(b), applies, or to a building to which the next but one succeeding section applies.

It should be noted that the local authority have no discretion as to the service of the notice, if they are satisfied that the building is without proper accommodation or the existing arrangements come within the terms of paragraph (b) of subsection (1), *supra*. In deciding what is "sufficient" closet accommodation, each case should be considered on its merits but, in general, the matter will be governed by the byelaws made by a local authority in accordance with section 61(1) (ii) of the Act of 1936 (see *ante*, p. 9). It should also be noted that a local authority cannot insist on the provision of a watercloset unless a sufficient water supply and sewer are available(c). It was held under the repealed section 36 of the Public Health Act, 1875(d), that a local authority had power to require the owner of a house, subject to his right of appeal, to provide a sufficient watercloset in place of an insufficient privy(e). This decision was upheld in a further case(f), but the court stated that the local authority must be satisfied that the conversion of the privy to a watercloset is the only satisfactory way of making the accommodation sufficient, in addition to being satisfied that the existing privy is insufficient.

Where it appears to a local authority that a closet in connection with a building is in such a state as to be prejudicial to health or a nuisance but it is capable without reconstruction of being made satisfactory, the authority must serve

(b) See now sect. 7, Factories Act, 1937; 30 Halsbury's Statutes 211.

(c) See definition, *ante*, p. 140.

(d) 13 Halsbury's Statutes 640.

(e) *Nicholl v. Epping U.D.C.*, [1899] 1 Ch. 844; 38 Digest 228, 590.

(f) *Carlton Main Colliery Co., Ltd. v. Hemsworth R.D.C.*, [1922] 2 Ch. 609; 38 Digest 228, 591.

a notice on the owner or the occupier, in accordance with section 45 of the Act of 1936, *infra*.

Section 45, Public Health Act, 1936.—Buildings having defective closets capable of repair.

- (1) If it appears to a local authority that any closets provided for or in connection with a building are in such a state as to be prejudicial to health or a nuisance, but that they can without reconstruction be put into a satisfactory condition, the authority shall by notice require the owner or the occupier of the building to execute such works, or to take such steps by cleansing the closets or otherwise, as may be necessary for that purpose.
- (2) In so far as a notice under this section requires a person to execute works, the provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to the notice.
- (3) In so far as such a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor :

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements or of their decision to address their notice to him and not to the occupier or, as the case may be, the owner of the building.

- (4) This section shall not apply to a shop to which the Shops Act, 1934, applies, or to a factory or workshop to which section nine of the Factory and Workshop Act, 1901(*ff*), applies, or to a building to which the next succeeding section applies.

Any notice served by a local authority in accordance with the provisions of sections 44 or 45, *supra*, must indicate the nature of the works to be executed, and state the time within which they are to be carried out(*g*).

It should be noted that sections 44 and 45, *supra*, do not apply to shops to which the Shops Act, 1934 (*h*), applies, or to a factory subject to the provisions of the Factories Act, 1937(*i*), or to a building used as a work-place subject to section 46 of the Act of 1936 (see *post*, p. 331).

APPEALS AGAINST NOTICE REQUIRING EXECUTION OF WORKS.

Where a notice is served under sections 44 or 45, *supra*, the person to whom the notice is addressed may appeal to a court of summary jurisdiction in accordance with section

(*ff*) See now sect. 7, Factories Act, 1937 ; 30 Halsbury's Statutes 211.

(*g*) Sect. 290(2), Public Health Act, 1936 ; 29 Halsbury's Statutes 509.

(*h*) 27 Halsbury's Statutes 226 ; and see *post*, p. 356.

(*i*) See *post*, p. 312.

290 of the Act of 1936 (see *ante*, p. 64). The grounds of appeal are fully set out in subsection (3) and by subsection (6) the local authority are empowered to execute the works specified on the notice if the person served with it fails to do so. Any expenses incurred by the authority may be recovered by them in accordance with the provisions of section 291 of the Act of 1936 (see *ante*, p. 74).

Where a local authority have carried out work and take proceedings for the recovery of any expenses incurred, the person proceeded against may not raise any question as to the validity of the original notice, which he might have raised on appeal made at the proper time(*j*).

Appeals against the requirements of a local authority must be made to a court of summary jurisdiction in accordance with the Summary Jurisdiction Acts, and be made within twenty-one days from the date on which the notice, etc., is served. Any notice, etc., served by a local authority must state the right of appeal and the time within which such appeal must be brought(*k*). Where a person is dissatisfied with a decision of a court of summary jurisdiction, he may appeal further to a court of quarter sessions, or, by agreement, the matter in dispute may be referred to an arbitrator instead of to quarter sessions(*l*).

• CONVERSION OF SANITARY CONVENIENCES.

A local authority are empowered by section 47 of the Act of 1936, *infra*, to require the conversion of closets, other than waterclosets, to waterclosets, even though such closets are not insufficient in number and are not prejudicial to health or a nuisance. In such a case, the authority may serve a notice upon the owner of the building either requiring him to execute the necessary work or requiring that the local authority themselves shall be allowed to do so. In the latter case, the authority are entitled to recover from the owner, one half of the expenses reasonably incurred by them, whilst if the owner is required to do the work, he may recover a similar sum from the local authority. Where no notice is served, a local authority may, by agreement with an owner, make a contribution towards the cost of conversion not exceeding one-half of the total amount.

Section 47, Public Health Act, 1936.—Replacement of earthclosets, etc., by waterclosets at joint expense of owner and local authority.

(1) If a building has a sufficient water supply and sewer available,

(*j*) Sect. 290(7), Public Health Act, 1936 ; 29 Halsbury's Statutes 510.

(*k*) *Ibid*, sect. 300, *ante*, p. 67.

(*l*) *Ibid*, sect. 301, *ante*, p. 68.

the local authority may, subject to the provisions of this section, by notice to the owner of the building require that any closets, other than waterclosets, provided for, or in connection with, the building shall be replaced by waterclosets, notwithstanding that the closets are not insufficient in number and are not prejudicial to health or a nuisance.

- (2) A notice under this section shall either require the owner to execute the necessary works, or require that the authority themselves shall be allowed to execute them, and shall state the effect of the next succeeding subsection.
- (3) Where under the preceding subsection a local authority require that they shall be allowed to execute the works, they shall be entitled to recover from the owner one-half of the expenses reasonably incurred by them in the execution of the works, and, where they require the owner to execute the works, the owner shall be entitled to recover from them one-half of the expenses reasonably incurred by him in the execution thereof.
- (4) Where the owner of a building proposes to provide it with a watercloset in substitution for a closet of any other type, the local authority may, if they think fit, agree to pay him a part, not exceeding one-half, of the expenses reasonably incurred in effecting the replacement, notwithstanding that a notice has not been served by them under this section.
- (5) The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice under this section requiring a person either to execute works or to allow works to be executed, subject however to the modifications that no appeal shall lie on the ground that the works are unnecessary and that any reference in the said provisions to the expenses reasonably incurred in executing works shall be construed as a reference to one-half of those expenses.

This section takes the place of the adoptive section 39 of the Public Health Acts Amendment Act, 1907(*m*), but there are two important differences in procedure. In the first place, the local authority are only required to make a contribution of one-half the cost of conversion, irrespective of the type of convenience, whereas under section 39, *supra*, they had to pay the whole of the cost of converting pail closets into waterclosets. This alteration should lead to many more pail closets being converted than hitherto. In the second place, a local authority may make a contribution by agreement with an owner, without going through the formality of serving a notice. This legalises a practice which had been adopted by some local authorities without any statutory power to do so.

An owner has a right of appeal against the requirements of a notice served under section 47, *supra*, in accordance with the terms of section 290 of the Act of 1936 (see *ante*, p. 64), provided that no appeal may be made on the ground that

the work is unnecessary, and any reference to the expenses incurred will relate to one-half of those expenses only.

In many towns, where large schemes of conversion have been carried out under the repealed provisions of the Act of 1907, the Minister of Health approved of the local authority raising a loan for the purpose of meeting their contributions towards the cost of the works, and in some cases special grants have been paid as part of a scheme for finding employment.

In order to secure complete uniformity, it is desirable that local authorities should avail themselves of the power contained in section 47(2), *ante*, p. 145, so that the work will be carried out by the authority and not by the owners. In this way the authority will be satisfied as to the quality of the work. In carrying out work under this section, it is desirable that tenders should be invited from a number of contractors, based on a fixed specification, and that the lowest tender should be accepted. If this is done there should be no difficulty in resisting an appeal made in respect of the recovery of expenses incurred by the local authority. In drafting a specification for the execution of work of this kind, care should be taken to follow closely the requirements of any byelaws in force in the district relative to sanitary conveniences.

SOILPIPES.

The soilpipe from every watercloset must be properly ventilated and a rainwater pipe may not be used for the purpose of conveying the soil or drainage from any sanitary convenience. A local authority are empowered to serve notice on the owner or occupier of premises where there is a contravention of these provisions requiring the execution of such work as may be necessary to remedy the matter(*n*). The provisions of the Act of 1936 relating to appeals against, and the enforcement of, notices requiring the execution of works apply in relation to any notice served by the local authority(*o*).

PROVISION OF SANITARY CONVENIENCES AT SPECIAL PREMISES, ETC.

(a) **Factories and workplaces.**—The provision of sanitary conveniences at factories and workplaces may be enforced either under the Factories Act, 1937(*p*), or under the Public

(*n*) Sect. 40, Public Health Act, 1936; 29 Halsbury's Statutes 356; and see *ante*, p. 131.

(*o*) *Ibid*, Part XII; *ibid*, 509; and see *ante*, p. 64.

(*p*) 30 Halsbury's Statutes 201.

Health Act, 1936(*g*). In the former case, action can be taken in respect to factories, and in the latter in respect to workplaces. Full details as to these provisions will be found in chapter 14 (see *post*, p. 312).

(b) **Shops.**—Section 10 of the Shops Act, 1934(*r*), empowers a local sanitary authority to require the provision of proper sanitary accommodation in shops. In certain cases, an authority are empowered to grant an exemption certificate in respect of any particular shop. The provision of sanitary accommodation in shops is fully dealt with in chapter 15 (see *post*, p. 356).

(c) **Common lodging-houses.**—Any local authority may make byelaws for the regulation of common lodging-houses(*s*) and these byelaws may include clauses relating to the provision and maintenance of proper sanitary conveniences. A local authority are entitled to refuse to register a common lodging-house on the grounds, *inter alia*, that the sanitation of the premises is unsuitable(*t*). Common lodging-houses are dealt with in detail in chapter 18 (see *post*, p. 403).

(d) **Houses-let-in-lodgings.**—A local authority are empowered by section 6 of the Housing Act, 1936(*u*), to make byelaws relating to working class houses and subsection (3) enables any of such byelaws to be limited to houses let in lodgings or occupied by members of more than one family. The byelaws may include clauses relating to the provision of adequate closet accommodation, and where necessary, for securing separate accommodation for every part of the house which is occupied as a separate dwelling. Reference should be made to chapter 18 (see *post*, p. 403) for details as to these byelaws.

(e) **Tents, vans and sheds.**—Section 268 of the Act of 1936 defines as a "statutory nuisance" (see *post*, p. 395), a tent, van, shed or similar structure which is without proper sanitary accommodation, and subsection (4) of that section empowers a local authority to make byelaws relating to such structures. Byelaws may be made with regard to the provision of sanitary accommodation and particulars of these byelaws will be found in chapter 17 (see *post*, p. 389).

(f) **Inns, refreshment houses, etc.**—Section 89 of the Act of 1936, *infra*, empowers a local authority to require the provision of proper sanitary conveniences at inns, public-

(*g*) Sect. 46, *post*, p. 331.

(*s*) Sect. 240, Public Health Act, 1936, *post*, p. 408.

(*t*) *Ibid.* sect. 238. *post*. p. 406.

(*r*) 27 Halsbury's Statutes 235.

(*u*) 29 Halsbury's Statutes 568.

houses, beer-houses, refreshment-houses and places of public entertainment.

It must be remembered that for the purposes of this section, the expression "sanitary conveniences" means "closets and urinals" (x) but it does not include lavatories as in the case of section 87 of the Act of 1936 (see *post*, p. 152).

Section 89, Public Health Act, 1936.—Power to require sanitary conveniences to be provided at inns, refreshment houses, etc.

- (1) A local authority may by notice require the owner or occupier of any inn, public-house, beer-house, refreshment house or place of public entertainment to provide and maintain in a suitable position such number of sanitary conveniences for the use of persons frequenting the premises as may be reasonable.
- (2) If any person fails to comply with a notice served upon him under this section, he shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor :

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements, or of their decision to address their notice to him and not to the occupier or, as the case may be, the owner of the premises.

This section is a considerable improvement upon the repealed section 44 of the Public Health Acts Amendment Act, 1907(y), which was confined to the provision of urinals only.

With regard to the provision of sanitary conveniences at licensed premises and places of public entertainment, it must be remembered that these are subject to some control by the licensing justices and the local authority should co-operate with that body in securing improved sanitary conditions. If the two bodies work together, it may be possible to obtain greatly improved conditions in excess of what could strictly be required under the Public Health Act. At the same time, it is competent for the local sanitary authority to take action in respect of licensed premises in case of—

- (i) nuisances under sections 92 *et seq* of the Act of 1936 (see *post*, p. 219) ;
- (ii) insufficient or defective closet accommodation, under sections 44 and 45 of the Act of 1936 (see *ante*, p. 141) ;
- (iii) insufficient sanitary conveniences, under section 89 of the Act of 1936, see *supra*.

(g) **Mines.**—Section 76 of the Coal Mines Act, 1911(a), authorises the making of regulations with respect to the pro-

vision and use of sanitary conveniences in mines, both above and below ground.

(h) **Motor Vehicles.**—The Motor Vehicles (Construction and Use) Regulations, 1937(*b*), article 22, provides that no motor vehicle or trailer registered for the first time on or after the 15th February, 1931, may be equipped with any closet, urinal, lavatory basin or sink, unless—

- (a) every closet pan or urinal pan shall empty into a tank carried by such motor vehicle or trailer as the case may be, such tank—
 - (i) being efficiently ventilated by means of a pipe, the outlet of which is outside the motor vehicle; and
 - (ii) containing non-inflammable and non-irritant chemicals, of such character and in such quantity as to form at all times an efficient deodorant and germicide in respect of the contents of tank;
- (b) no lavatory basin or sink shall drain into the tank specified in paragraph (*a*) hereof.

Article 74 of the same Regulations prohibits any part of the contents of any closet, urinal, lavatory basin or sink, or of any tank into which such closet, etc., drains, being discharged or allowed to leak on to a road. Section 3 of the Road Traffic Act, 1930(*d*), imposes a penalty in any case where a motor vehicle does not comply with the requirements regarding construction laid down in the Regulations, *supra*, and Article 94 of the Regulations imposes a penalty in case of a contravention of Article 74, *supra*.

NUISANCES ARISING FROM SANITARY CONVENIENCES.

Any premises in such a state as to be prejudicial to health or a nuisance, may be dealt with as a “statutory nuisance” in accordance with the powers contained in section 92 of the Act of 1936 *et seq.* (see *post*, p. 219). Whilst it might be possible to deal with a sanitary convenience in an unsatisfactory condition as a statutory nuisance, in the majority of cases it will be found that the procedure laid down in sections 44 or 45 of the Act of 1936 (see *ante*, p. 141 *et seq.*), is more suitable. If, however, it is desired to take action under the nuisance sections, full details as to procedure will be found in chapter 9 (see *post*, p. 216).

Reference has already been made (*supra*) to nuisances arising from the absence of sanitary conveniences in connection with tents, vans, sheds and similar structures.

(b) S. R. and O., 1937. No. 229.

(d) 23 Halsbury's Statutes 610.

Rooms over certain sanitary conveniences, etc.—Section 49 of the Act of 1936, *infra*, prohibits a room being used as a living room, sleeping room or workroom, if it is immediately over a closet, other than a watercloset or earthcloset.

Section 49, Public Health Act, 1936.—Rooms over closets of certain types, or over ashpits, etc., not to be used as living, sleeping or work rooms.

- (1) A room which, or any part of which, is immediately over a closet, other than a watercloset or earthcloset, or immediately over a cesspool, midden or ashpit, shall not be occupied as a living room, sleeping room or workroom.
- (2) Any person who, after seven days' notice from the local authority, occupies any room in contravention of the provisions of this section, or who permits any room to be so occupied, shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

EXAMINATION AND TESTING OF SANITARY CONVENIENCES.

A local authority are empowered by section 48 of the Act of 1936 (see *ante*, p. 133), where it appears to them that any sanitary convenience is in such a condition as to be prejudicial to health or a nuisance, to examine its condition and for that purpose they may apply any test, other than a test by water under pressure, and if necessary, open the ground. It should be observed that as compared with the repealed section 41 of the Public Health Act, 1875(*f*), and section 45 of the Public Health Acts Amendment Act, 1907(*g*), the local authority may act without a specific report from their sanitary inspector (see *ante*, p. 49), but in actual practice this is not likely to happen. It should also be noted that whereas under these sections of the Acts of 1875 and 1907, *supra*, the local authority were empowered to authorise either their sanitary inspector or surveyor to enter the premises and make the examination, section 48 of the Act of 1936, makes no reference to the examination being carried out by an officer of the authority, but states that the local authority may examine the condition of the convenience. Under section 287 of the Act of 1936 (see *ante*, p. 52), however, a properly authorised officer is empowered to enter premises for the purpose of taking any action which the Act empowers the local authority to take and section 343 (*ibid*) provides that a sanitary inspector shall, by virtue of his appointment, be deemed to be an authorised officer for matters within his province. It is clear there-

(f) 13 Halsbury's Statutes 642.

(g) 13 Halsbury's Statutes 928.

fore that although the wording of section 48, *supra*, differs essentially from that in the repealed sections, read in conjunction with sections 287 and 343, *supra*, the effect is apparently the same. Contrary to section 45 of the Act of 1907, however, section 48 of the Act of 1936 enables the defective convenience to be examined and tested without obtaining either the consent of the owner or occupier, or an order of the court.

Any person who wilfully obstructs a person acting in the execution of the Act of 1936, is liable to a fine not exceeding five pounds and to a daily penalty of five pounds for each day on which the offence continues after conviction(*h*).

CARE OF SANITARY CONVENIENCES.

The occupier of every building provided with a water-closet or earthcloset, is required by section 51 of the Act of 1936, *infra*, to keep it supplied with water, or dry earth or other suitable material, respectively.

Section 51, Public Health Act, 1936.—Care of closets.

- (1) The occupier of every building in, or in connection with, which a watercloset or an earthcloset is provided shall, in the case of a watercloset, cause the flushing apparatus thereof to be kept supplied with water sufficient for flushing and where necessary to be properly protected against frost, and shall, in the case of an earthcloset, cause it to be kept supplied with dry earth or other suitable deodorising material.
- (2) A person who fails to comply with any of the provisions of this section shall be liable to a fine not exceeding forty shillings.

Section 52 of the Act of 1936, *infra*, deals with the care of sanitary conveniences used in common by the members of two or more families.

Section 52, Public Health Act, 1936.—Care of sanitary conveniences used in common.

Where a sanitary convenience is used in common by the members of two or more families, the following provisions shall have effect:—

- (a) if any person injures or improperly fouls the convenience, or anything used in connection therewith, or wilfully or by negligence causes an obstruction in the drain therefrom, he shall be liable to a fine not exceeding ten shillings;
- (b) if the convenience, or the approach thereto, is, for want of proper cleansing or attention, in such a condition as to be insanitary, such of the persons having the use thereof in common as are in default or, in the absence of satisfactory proof as to which of them is in default, each of them, shall be liable to a fine not exceeding ten shillings, and to a further fine not exceeding five shillings for each day on which the offence continues after conviction therefor.

(*h*) Sect. 288, Public Health Act, 1936; 29 Halsbury's Statutes 509.

It should be remembered that section 44 of the Act of 1936 (see *ante*, p. 141) empowers a local authority to require the provision of *sufficient* closet accommodation and this does not necessarily mean a separate convenience for each house⁽ⁱ⁾ or part of a house used as a separate dwelling. At the same time, a local authority are entitled under section 6 of the Housing Act, 1936^(k), to make byelaws dealing with working class houses, including houses let in lodgings or occupied by members of more than one family, requiring the provision of adequate and readily accessible closet accommodation, and, where necessary, for securing separate accommodation for every part of a house which is occupied as a separate dwelling^(l). Wherever possible, a separate water-closet or earthcloset should be provided for each house or part of a house used as a separate dwelling, but where this cannot be done, the provisions of section 52, *ante*, p. 151, should be used where the respective families do not use the sanitary conveniences properly.

PUBLIC SANITARY CONVENIENCES.

A local authority are empowered by section 87 of the Act of 1936, *infra*, to provide public sanitary conveniences, and they may make byelaws with respect to the control thereof. For the purposes of this section, the expression "sanitary conveniences" is extended to include lavatories.

Section 87, Public Health Act, 1936.—Provision of public conveniences.

- (1) A local authority may provide public sanitary conveniences in proper and convenient situations :

Provided that they shall not without the consent of the county council, which may be given upon such terms as the council think fit, provide such conveniences in or under any highway, or on or under any land forming the site of a proposed new highway, if that highway or new highway is, or is intended to be, a highway with respect to which the county council are, or will be, the highway authority.

- (2) A county council may themselves provide public sanitary conveniences in any situation in which such conveniences could not be provided by a local authority except with the consent of the county council.
- (3) A county council or local authority who provide any public sanitary conveniences, may—
 - (a) make byelaws as to the conduct of persons using or entering them ;
 - (b) let them for such term, at such rent, and subject to such conditions as they think fit ;

⁽ⁱ⁾ *Clutton Union (Guardians of) v. Ponting* (1879), 4 Q.B.D. 540 ; 38 Digest 228, 587.

^(k) 29 Halsbury's Statutes 568.

^(l) See chapter 18, *post*, p. 403.

- (c) charge such fees for the use of any such conveniences, other than urinals, as they think fit.
- (4) In this section the expression "sanitary conveniences" includes lavatories.

It should be noted that as compared to the repealed section 39 of the Public Health Act, 1875(*m*), the present section applies to all local authorities and not only to urban authorities, with the proviso relating to county roads. There have been numerous cases under section 39, *supra*, as to the powers of an authority to erect public conveniences and in general it has been held that they have complete discretion in the matter provided the convenience would not be a nuisance to adjoining owners(*n*). In a case where a local authority proposed to erect a public convenience (including a urinal) in a public park, about 230 feet from the nearest houses and in full view of them all, and the plaintiff proved that the letting value of his houses would be reduced and that there were other more convenient sites, an injunction was refused in the absence of evidence of bad faith or arbitrary, perverse and vexatious conduct(*o*).

Where any public sanitary convenience is in or accessible from any street, it may not be erected without the previous consent of the local authority, who are empowered by section 88 of the Act of 1936, *infra*, to impose such conditions with regard to the removal of the convenience at any time as they may think fit.

Section 88, Public Health Act, 1936.—Control over conveniences in, or accessible from streets.

- (1) No person shall erect any public sanitary convenience in, or so as to be accessible from, any street without the consent of the local authority, who may give their consent upon such terms as to the use of the convenience or its removal at any time, if required by them, as they think fit, and, if any person contravenes the provisions of this subsection, he shall be liable to a fine not exceeding five pounds, without prejudice to the right of the authority under subsection (3) of this section to require the convenience to be removed :

Provided that this subsection shall not apply to any sanitary convenience erected by a railway company within their railway station, or the yard thereof, or the approaches thereto, or erected by dock undertakers in or on land which belongs to them and is held or used by them for the purposes of their undertaking.

(*m*) 13 Halsbury's Statutes 642.

(*n*) *Biddulph v. St. George's, Hanover Square (Vestry of)* (1863), 33 L.J.Ch. 411; 38 Digest 233, 625. *Mogg v. Bocken* (1888), 5 T.L.R. 22. *Mason v. Wallasey L.B.* (1876), 58 J.P. 477.

(*o*) *Pethick v. Plymouth Corpn.* (1894), 58 J.P. 476; 38 Digest 233, 623.

- (2) Any person aggrieved by the refusal of a local authority to give a consent under the preceding subsection, or by any terms imposed by them, may appeal to a court of summary jurisdiction.
- (3) The local authority may by notice require—
 - (a) the owner of a sanitary convenience which has been erected in contravention of subsection (1) of this section, or the removal of which they are by virtue of the terms of a consent given under that subsection entitled to require, to remove it;
 - (b) the owner of a sanitary convenience which opens on a street and is so placed or constructed as to be a nuisance or offensive to public decency, to remove or permanently to close it.
- (4) The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this section.
- (5) Nothing in this section affects the powers of a county council under the last preceding section.

PROTECTION OF FOODSTUFFS FROM CONTAMINATION FROM SANITARY CONVENIENCES.

(a) **Public Health (Meat) Regulations, 1924.**—Article 20(1) of the Public Health (Meat) Regulations, 1924(*p*), requires the occupier of every room in which meat is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale or with a view to future sale, to comply, *inter alia*, with the following requirements:—

- (i) No urinal, watercloset, earthcloset, privy, ashpit, or other like sanitary convenience shall be within such room or shall communicate directly therewith, or shall be otherwise so placed that offensive odours therefrom can penetrate to such room; and
- (ii) No cistern for supplying water to such room shall be in direct communication with or directly discharge into any such sanitary convenience.

Food and Drugs Act, 1938.—The following provisions have effect in relation to every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, viz. :—

- (i) no sanitary convenience, dustbin or ashpit may be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room; and

- (ii) no cistern for the supply of water to the room may be in direct communication with, or discharge directly into, a sanitary convenience, and there must not be within the room any outlet for the ventilation of a drain, or, except with the approval of the local authority, an inlet into any drain conveying sewage or foul water^(q).

(c) **Milk and Dairies Order, 1926.**—With a view to the prevention of the contamination of milk, Article 14 of the Milk and Dairies Order, 1926^(r), prohibits the keeping of milk in any room which, *inter alia*, communicates directly by door, window or otherwise, with any watercloset, earthcloset, privy, cesspool, or receptacle for ashes or other refuse.

^(q) Sect. 13, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 261.

^(r) S.R. and O., 1926, No. 821.

CHAPTER 7.

WATER SUPPLY.

The powers and duties of local authorities in regard to water supply are contained in Part IV, sections 111 to 142, of the Act of 1936(*a*), which take the place of the provisions in the Public Health Act, 1875, found chiefly in sections 51 to 70(*b*) and the Public Health (Water) Act, 1878(*c*); and see note in Preface, *ante*.

GENERAL POWERS AND DUTIES OF LOCAL AUTHORITIES.

Section 111 of the Act of 1936, *infra*, imposes a duty upon local authorities to take adequate steps to secure the provision of a proper water supply for their district. It should be noted that this section applies to all local authorities and is not restricted to rural authorities as was the case with sections 3, 7 and 11 of the Public Health (Water) Act, 1878(*d*), which are replaced by the present section.

Section 111, Public Health Act, 1936.—Duty of local authority with respect to water supplies within their district.

It shall be the duty of every local authority—

- (i) to take from time to time such steps as may be necessary for ascertaining the sufficiency and wholesomeness of the water supplies within their district; and
- (ii) for the purpose of securing, so far as is reasonably practicable, that every house and school has available within a reasonable distance a sufficient supply of wholesome water for domestic purposes—
 - (a) to provide a supply of water to every part of their district in which danger to health arises from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required and can be carried out at a reasonable cost; and
 - (b) without prejudice to their obligations under the preceding sub-paragraph, to exercise their powers under this Part of this Act of requiring owners of houses to provide a supply of water thereto (*dd*).

The powers of local authorities to require houses to be provided with a proper water supply are contained in sections 137 and 138 of the Act of 1936 (see *post*, pp. 170 *et seq*).

(a) 29 Halsbury's Statutes 407.

(b) 13 Halsbury's Statutes 647

(c) 20 Halsbury's Statutes 240.

(d) 20 Halsbury's Statutes 241, 244, 245. (*dd*) See note in Preface, *ante*.

If a local authority neglect to carry out their duties under the Public Health Act, with regard to water supply, a complaint may be made to the county council (in the case of a county district council) or to the Minister of Health, and in such a case the Minister may cause a public local inquiry to be held and may transfer the functions of the defaulting local authority either to the county council (in the case of a county district council) or to himself(*e*).

Where a local authority supply water for domestic purposes, they *may* also supply water for other purposes(*f*), but it should be noted that they are not bound to do so. Water may also be supplied by a local authority to premises outside their own area, where the Minister of Health by order authorises such authority to do so(*g*). For obvious reasons the Minister is only empowered to make such an order where there is sufficient water to serve not only the whole of the needs of the local authority's own area but also the premises outside that area who desire a water supply. Under various local Acts, some of the larger local authorities have been able to assist smaller authorities by extension of water mains into villages and rural parishes, thereby securing a proper water supply at a reasonable expense. Subject to the approval of the Minister a local authority may supply water in bulk to a neighbouring authority, on such terms as may be agreed upon between them(*h*).

Section 115 of the Act of 1936 requires every local authority who supply water for domestic purposes to take the necessary steps to secure that such water is wholesome(*i*). It should be noted that this requirement is compulsory and if a local authority make default, action may be taken by the Minister of Health(*k*).

A local authority supplying water infected by typhoid bacilli were held to be guilty of negligence at common law(*l*). In a case(*m*) where water supplied by a water board was pure so long as it was in iron pipes but dissolved lead when passing through pipes of that metal, it was held that the board were negligent, in that it should have taken steps to reduce the

(*e*) Sects. 321/325, Public Health Act, 1936; see *ante*, pp. 18 *et seq.*

(*f*) *Ibid*, sect. 112; 29 Halsbury's Statutes 408.

(*g*) *Ibid*, sect. 113; 29 Halsbury's Statutes 408.

(*h*) *Ibid*, sect. 114; 29 Halsbury's Statutes 408.

(*i*) 29 Halsbury's Statutes 408. As to sampling and examination of water, see *post*, p. 175, and the author's *Housing Administration*, 2nd Edn., pp. 75 *et seq.*

(*k*) Sects. 321/325, Public Health Act, 1936; see *ante*, pp. 18 *et seq.*

(*l*) *Read v. Croydon Corpn.*, [1938] 4 All E. R. 631; Digest Supp.

(*m*) *Barnes v. Irwell Valley Water Board*, [1938] 2 All E. R. 650; Digest Supp.

plumbo-solvency of the water or have warned consumers of the dangers to health likely to arise if the water passed through lead service pipes.

PROVISION OF WATERWORKS.

In order to provide a supply of water, a local authority may, in accordance with section 116 of the Act of 1936—

- (i) construct, take on lease, or with the approval of the Minister purchase by agreement, waterworks ;
- (ii) with the approval of the Minister purchase by agreement any water, or right to take or convey water, or other rights, powers and privileges in relation to the supply of water, and, in so far as it may be necessary for facilitating the supply of water, any water-mill, dam, or weir ;
- (iii) with the approval of the Minister purchase by agreement the water undertaking of any statutory water undertakers whose limits of supply are coterminous with, or include the whole or any part of, the authority's district, and any water undertaking belonging to persons who are supplying water in any part of the authority's district, but are not statutory water undertakers ;
- (iv) contract with any local authority or other person for a supply of water and, in particular, avail themselves of the provisions of the Supply of Water in Bulk Act, 1934 ;
- (v) give any such guarantee in respect of a supply of water as is authorised by any subsequent provision of this Part of this Act.

The expression " waterworks " includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines and all machinery, lands, buildings and things for supplying, or used for supplying, water, or used for protecting sources of water supply⁽ⁿ⁾.

Under section 274 of the Act of 1936^(o), a local authority may execute any particular works outside their district where they are authorised to do so within their area, so that they may construct waterworks within the district of another authority. Nothing in the Act authorises an authority to injuriously affect any reservoir, canal, watercourse, river or stream, or any feeder thereof, or the supply, quality, or fall of water contained therein, without the consent of the appropriate person concerned^(p). Where any difference of opinion arises between a local authority and any person as to whether the supply, quality or fall of water in any reservoir, canal,

⁽ⁿ⁾ *Ibid*, sect. 343(1) ; 29 Halsbury's Statutes 536.

^(o) 29 Halsbury's Statutes 498.

^(p) *Ibid* sect. 221 ; 29 Halsbury's Statutes 531.

watercourse, river, stream or feed is injuriously affected by the exercise of the powers of the Public Health Act, the matter may, at the option of either party, be referred to an arbitrator(*q*). Section 274, *supra*, does not entitle a local authority to take steps to provide water in any part of their district which is within the limits of supply of any statutory water undertakers, without the consent of such undertakers, and the execution of works under that section is subject to the approval of the Minister of Health.

If a rural district council propose to carry out any works under section 116, *supra*, they *must*, before adopting any plans, give notice of their proposals to the parish council or parish meeting concerned(*r*).

Where a local authority are supplying water to any premises within the limits of supply of any statutory water undertakers by virtue of a consent given by such undertakers(*s*), the undertakers may, in the absence of any agreement to the contrary, give one month's notice to the supplying authority of their intention to supply water to the premises in question. After the statutory undertakers have commenced to supply water, the supplying authority must cease to do so but the former must pay to the latter any reasonable expenses incurred by them in supplying water to the premises(*t*). In case of dispute, the matter is to be settled by arbitration (see *ante*, p. 68).

If a local authority propose to construct a reservoir of a capacity exceeding 100,000 gallons they must publish in a local newspaper circulating in the area where the reservoir is to be built, a notice describing the nature of the proposed works. If the reservoir is situated within the area of another local authority, a copy of the notice must be served upon such authority. If any person, or a local authority, object to the proposals of the local authority, within a period of twenty-eight days from the date of publication of the notice, the works may not proceed until the Minister of Health, after local inquiry, has approved of the proposals, with or without modification(*u*).

With a view to safeguarding the security of reservoirs, local authorities have certain powers and duties under the Reservoirs (Safety Provisions) Act, 1930(*x*). After January 1st, 1931, no

(*q*) *Ibid.*, sect. 332; 29 Halsbury's Statutes 531.

(*r*) *Ibid.*, sect. 116(4); 29 Halsbury's Statutes 409.

(*s*) *Ibid.*, sect. 113; 29 Halsbury's Statutes 408.

(*t*) *Ibid.*, sect. 117; 29 Halsbury's Statutes 410.

(*u*) *Ibid.*, sect. 118; 29 Halsbury's Statutes 411.

(*x*) 23 Halsbury's Statutes 755.

large reservoir(y) can be constructed unless a qualified civil engineer is employed to design and supervise its construction. All such reservoirs, whether constructed before or after that date, must be periodically inspected and the water undertakers are obliged, subject to a right of appeal, to carry out the recommendations of the inspecting engineer as detailed in his report. After the initial inspection carried out in accordance with the dates laid down in the Act, further inspections must be carried out at intervals of not more than ten years, unless the report of the inspecting officer recommends a more frequent inspection. Where the undertakers employ a properly qualified civil engineer such officer may be appointed for the purposes of the Act. Otherwise, the undertakers must appoint an engineer specially for the purpose.

The water undertakers must keep records relating to large reservoirs giving information at the prescribed intervals as to (a) water levels and depth of water including the flow of water over the waste weir or overflow ; (b) leakage, settlements of walls and other works and repairs ; and (c) such other matters as may be prescribed. They must also publish, within one month of the receipt of certificates and reports made under the Act, notice of the fact and of the place where the certificate or report may be inspected(a).

On the request of a local authority likely to be affected by the escape of water from the reservoir, or by any person resident in or interested in property in any area likely to be so affected, the undertakers must—

- (a) give information as to whether any such certificate or report has been received and such information as may reasonably be required as to the measures (if any) taken or proposed to be taken to give effect to any recommendations in any such report ;
- (b) produce for inspection any certificate or report which the undertakers are required to keep ; and
- (c) supply a certified copy of any such certificate or report on payment of the reasonable cost of copying (b).

Such a local authority may, in the event of an alleged default on the part of the undertakers in complying with the foregoing provisions, apply to quarter sessions for such order in relation to the reservoir as seems to the court to be required

(y) Defined as " a reservoir (whether constructed under statutory powers or not and whether intended for the purpose of impounding water or for service purposes) designed to hold, or capable of holding, more than five million gallons of water above the natural level of any part of the land adjoining the reservoir."—Reservoirs (Safety Provisions) Act, 1930, sect. 10 ; 23 Halsbury's Statutes 762.

(a) *Ibid*, sect. 3.

(b) *Ibid*, sect. 4.

in the interests of safety, and the court may make such an order(c).

For the purposes of the Act, a panel of civil engineers has been formed, and regulations have been made as provided by the Act(d).

Under section 119 of the Act of 1936(e), a local authority have the same powers with regard to the laying and maintaining of water mains, within or without their district, as they have with regard to the construction and maintenance of sewers (see *ante*, p. 92 *et seq.*).

Sections 44 to 51, 53 to 71, 73 and 74 of the Waterworks Clauses Act, 1847(f), are, by section 120, incorporated with the Act of 1936(g).

Sections 44 to 47, *supra* (relating to the communication pipes to be laid by the undertakers), and sections 48 to 51 and 53 (relating to the communication pipes to be laid by the inhabitants), apply only in districts or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof. The provisions with respect to the communication pipes to be laid by the inhabitants (sections 48 to 51 and 53, *supra*) are subject to the provisions of section 121 of the Act of 1936.

Section 121, Public Health Act, 1936.—Power of owner or occupier to break open streets for laying pipes, subject, in certain cases, to right of local authority to execute the work.

- (1) Subject to the provisions of Part XII of this Act with respect to the breaking open of streets, and to the following provisions of this section, any owner or occupier of premises entitled under this Act to take a supply of water from the mains of a local authority may break open any street for the purpose of laying any necessary communication pipe and for the purpose of inspecting, repairing and renewing any communication pipe serving his premises.
- (2) A person who proposes to lay a pipe from his premises to communicate with a main of the local authority shall give to the authority notice of his proposals and they may, within twenty-one days after the receipt thereof, give notice to him that they intend themselves to make the communication and if, after such a notice has been given to him, he proceeds himself to make the communication, he shall be liable to a fine not exceeding fifty pounds.
- (3) Where a local authority have given such a notice as aforesaid, they shall have all such rights in respect of the making of the communication as the person desiring it to be made would have,

(c) *Ibid*, sect. 5.

(e) 29 Halsbury's Statutes 411.

(g) 29 Halsbury's Statutes 412.

(d) S.R. and O., 1930, Nos. 1125, 1126.

(f) 20 Halsbury's Statutes 201, 204, 209.

but it shall not be obligatory on them to make the communication until the cost of the work as estimated by their surveyor has been paid to them, or security for payment has been given to their satisfaction.

- (4) If any payment so made to the local authority exceeds the expenses reasonably incurred by them in the execution of the work, the excess shall be repaid by them and, if and so far as those expenses are not covered by the payment, if any, made to them, they may recover the expenses, or the balance thereof, from the person for whom the work was done.
- (5) For the purposes of this section, the making of the communication with a main includes all such work as involves the breaking open of a street.

The most important section in the Waterworks Clauses Act, 1847, which is incorporated in the Act of 1936 and referred to above, is section 53, *infra*.

Section 53, Waterworks Clauses Act, 1847.—Right of owners or occupiers to supply of water for domestic purposes.

Every owner and occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

It was held that the expression "private dwelling-house" is limited to private dwelling-houses, and that a workhouse^(h) and a theatre⁽ⁱ⁾ were not within that description. The expression "domestic purposes" has been held to include a supply to a fixed bath^(k) except where expressly excluded^(l). It has been held that water for domestic purposes does not include water used for the watering of a garden^(m) and section 12 of the Waterworks Clauses Act, 1863⁽ⁿ⁾, provides that a supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, for watering gardens, or for fountains, or

(h) *Bristol Guardians v. Bristol Waterworks Co.*, [1914] A.C. 379; 43 Digest 1066, 62.

(i) *Northern Theatres Co. v. Shillito*, [1925] 2 K.B. 100; 43 Digest 1079, 140.

(k) *Weaver v. Cardiff Corpn.* (1883), 47 J.P. 599; 43 Digest 1092, 235.

(l) *Walker v. Lambeth Waterworks Co.* (1894), 58 J.P. 736; 43 Digest 1081, 151.

(m) *Per* Jessel, M.R., in *Low v. Lambeth Waterworks Co.* (not reported).

(n) 20 Halsbury's Statutes 191.

for any ornamental purpose(o). Water supplied to a boarding house is water supplied for domestic purposes(p).

In addition to the provisions of the Waterworks Clauses Act, 1847, detailed previously, the whole of the Waterworks Clauses Act, 1863(q), except section 15, are also incorporated with the Act of 1936(r). The Act of 1863 contains provisions relating to (1) security of reservoirs; (2) supply of water; (3) protection of water; and (4) recovery of rates.

As to compensation for war damage to buildings used by a water undertaking, see section 40, War Damage Act, 1941(s).

SAFEGUARDING OF WATER UNDERTAKINGS.

In 1938, the Ministry of Health drew attention to the need for unremitting care in order to maintain the purity of the water supplies under the care of water undertakers(t), and in 1939, a memorandum setting out in some detail the nature of the precautions which should be taken in their day-to-day administration, was issued(u). The following is a summary of the memorandum.

1. Health of workmen employed on waterworks.—Careful attention must be paid to the health of workmen employed on waterworks other than works where no risk to the purity of the water supply is likely to arise, and the clinical history of each, particularly with reference to enteric infection, must be thoroughly investigated. Any man affected with illness associated with looseness of the bowels must be suspended from work until his complete recovery and medical examination shows that he is safe to resume work. Every new man proposed to be employed in work where there is a risk of contamination of the water, should be examined by means of a Widal test of his blood to see whether or not he is a typhoid carrier. If a positive result is obtained which is not due to preventive inoculation, he should not be employed until bacteriological examination of his excreta on at least three occasions shows negative results as regards the presence of pathogenic organisms. The de-

(o) Waterworks Clauses Act, 1863, is incorporated with the Public Health Act, 1936, *vide* sect. 120; 29 Halsbury's Statutes 412.

(p) *Pidgeon v. Great Yarmouth Waterworks Co.*, [1902] 1 K.B. 310; 43 Digest 1081, 155.

(q) 20 Halsbury's Statutes 220.

(r) Sect. 120, Public Health Act, 1936; 29 Halsbury's Statutes 412.

(s) 34 Halsbury's Statutes 491.

(t) Ministry of Health, Circular 1684, 12th March, 1938.

(u) Ministry of Health, Circular 1771, 30th January, 1939, and Memorandum 221.

cision of the medical officer of health as to the fitness of men for employment on waterworks, should be final.

2. General cleanliness of waterworks.—All buildings, machinery, apparatus and yards used for waterworks purposes should be kept scrupulously clean. Proper and adequate sanitary accommodation and washing facilities should be provided at any part of the works where men are regularly employed. All such accommodation should be regularly inspected, and all drains should be periodically tested in order to ensure that no leakage occurs.

3. Protection of sources of supply.—In the case of *upland overground supplies*, the whole of the gathering ground above the reservoir dam or the intake should be acquired by the undertakers wherever possible, and the reservoir or intake should be protected by adequate fencing. The drainage from farmyards or houses remaining on the gathering ground or the manuring of land on the gathering ground should not pollute the source of supply. Where the gathering ground cannot be acquired, it should be part of the routine duty of the staff of the water undertakers to make regular and frequent inspections of the whole of the gathering ground, with a view to the detection of possible sources of pollution. Any building development should receive particular attention. In the case of *springs*, a sufficient area of land surrounding the spring should be acquired to enable the undertakers to apply adequate protective measures, and a close watch should be kept by the staff on the ground in the vicinity of the spring for the detection of any possible source of pollution. In the case of *river supplies*, where the water is obtained from the lower reaches of a river or stream, regular and frequent inspections should be made of its course above the intake, for the purpose of the detection of any possible source of pollution. In the case of *underground sources*, any well or borehole should be made watertight to such a depth as will prevent any surface pollution from entering and there should be an efficient sealing between the casing of the borehole and the surrounding ground. The lining of the borehole or well should be inspected frequently for the detection of defects. A sufficient area of land should be acquired surrounding the site of the borehole or well, to enable it to be properly protected. Where the well or borehole is on or near to the outcrop of the strata from which the water is drawn, it should be the routine duty of the water undertakers' staff to make regular and frequent inspections of the area within two miles of the site of the well or borehole for the detection of possible sources of pollution, and particular attention should be

directed to cesspools and soakaways. A map showing details of any sewerage scheme within this area should be kept. The inspections carried out by the staff should be carefully recorded and reports made to the undertakers or appropriate committee of the local authority. Appropriate action should be taken whenever there is any indication of possible pollution of the water. These reports will assist materially in the interpretation of the results of the analysis of the raw water.

4. Analyses^(x).—In cases where the water is being supplied without treatment, frequent and regular analyses of the water should be carried out. Where there is a tendency to fluctuation in the composition or bacterial content of the water, or if inspection of the gathering ground of the source of supply indicates possible pollution, analyses should invariably be made at very short intervals. The interpretation of the results of the examination of samples of water must be governed by the nature of the source of supply and the conditions of the gathering ground, but the undertakers, when advised by the medical officer of health to do so, should not hesitate to subject the water to an effective method of treatment. In the case of water which is subjected to treatment, regular analyses of the raw and treated water should be carried out. The number of samples of raw water examined need not be as numerous as in the case of untreated water, but the number should be sufficient to act as a guide to the treatment of the water.

5. Treatment of water.—Every effort should be made to ensure that there are at least two lines of defence, and reliance should not be placed on one method of treatment only, e.g. chlorination. For example, chlorination or other effective form of sterilisation should follow storage or filtration. Treatment plant should not only be under the control of properly qualified persons but should also as far as possible be automatically controlled. In the case of chlorination, the dosage should be automatically and continuously recorded, and should be such as to leave residual chlorine after a reasonable period of contact, the period required being determined by the undertakers on expert advice, and frequent tests should be made to ensure this result.

6. Service reservoirs.—Wherever possible service reservoirs, from which water passes direct to the consumer, should be covered. Care should be taken to prevent pollution of the water through ventilators, manholes, washouts and overflows. Ser-

(x) For information as to the technique of water analysis, see "Reports on Public Health and Medical Subjects, No. 71—Ministry of Health—The Bacteriological Examination of Water Supplies," H.M.S.O., price 1s. 3d.

vice reservoirs should be periodically inspected with a view to the detection of cracks or other defects which may develop and permit the access of pollution to the water.

7. Mains and hydrants.—All new mains should be thoroughly flushed before being used for the conveyance of water to consumers, and wherever possible chlorinated water should be used for the purpose. Mains that have been cut and repaired should be similarly treated. Air valves and air vents should be so arranged that there is no possibility of pollution of the water. Ball hydrants form a ready means of pollution of the water and these fittings should be replaced by safer types of hydrant.

8. Works of repair and cleaning.—Great care must be exercised when repairs or extensions are being carried out. Workmen must be instructed as to their conduct while at work, in precise terms, and it should be made clear to them that any breach of the instructions will be followed by dismissal. Where pumps or other machinery are removed from a well or borehole for cleaning or repair, they should be thoroughly cleansed with chlorinated water before being replaced. New pumps and machinery must be similarly treated. In the case of wells or headings, the water therefrom should, wherever possible, be cut off and pumped to waste. If this is not possible, it should be subjected to an effective method of treatment during the period while the work is in progress and for at least a week after the work is completed. The workmen should be provided with boots and overalls which should be kept at the water-works and the boots should be cleansed with chlorinated water on every occasion before the men enter the well. Adequate sanitary arrangements should be provided at the surface and be so designed that any risk of the men's boots being fouled is avoided. Pails, of a type which minimises the risk of splashing or overturning, should be provided for micturition where the men are working. Strict instructions must be given that any man wishing to defaecate must be brought to the surface and that micturition should take place in the pail provided. In the case of repairs to service reservoirs or filters, the pails for micturition purposes should be placed as near as conveniently possible to the place where the men are actually working. After cleaning, service reservoirs should be thoroughly sluiced with clean water, which should be chlorinated wherever possible.

9. Maps.—An up-to-date record in the form of maps and plans should be kept of the sites of the sources of water supply, reservoirs, and distribution systems. A diagram of the pipes

and valves in and around engine houses and reservoirs should also be kept.

PUBLIC WELLS, PUMPS, ETC.

Section 124 of the Act of 1936(a) vests all public pumps, wells, cisterns, reservoirs, conduits, and other works used for the gratuitous supply of water to the inhabitants of any part of the district of a local authority, in that authority, who may cause the works to be supplied with wholesome water. If the authority are satisfied that the works are no longer required, or that the water obtained therefrom is polluted and the cause of the pollution cannot be removed, they may close the works or restrict the use of the water. A stone trough receiving water from a spring has been held to be either a "well" or a "reservoir"(b). In a further case(c), a natural pond used by the public for the watering of horses was held to be a "reservoir." A well situated on private ground may be "public" within the meaning of section 124, *supra*, if a right to use it has been acquired by those members of the general public living within its reach(d). It should be noted that the use must be "gratuitous," but the fact that the members of the public using the well or pump subscribed small sums for its repair does not necessarily prevent the user being "gratuitous"(e). A local authority is not empowered to trespass on private property in order to supply water to pumps, etc.(f). A parish council has no power to bring an action on behalf of the inhabitants of the parish, even for the purpose of restraining interference with a pump properly erected by the council in the exercise of their powers(g). The vesting of public pumps, etc., in the local authority enables that authority to bring an action in their own name for damages in respect of any interference with the well or pump, etc., but an action in respect of interference with public access to the well, etc., can only be brought in the name of the Attorney-General(h). In the case of an unfenced disused mine shaft (see *post*, p. 243) coming within the provisions of section 13 of the Metalliferous Mines Regulations Act, 1872(i), such disused mine shaft having

(a) 29 Halsbury's Statutes 414.

(b) *Holmfirth L.B. v. Shore* (1895), 59 J.P. 344; 43 Digest 1065, 56.

(c) *Leadgate L.B. v. Bland* (1881), 45 J.P. 526.

(d) *Smith v. Archibald* (1880); 5 App. Cas. 489; 19 Digest 162, 1134.

(e) *A.-G. v. Tonkin* (1901), 18 T.L.R. 29; 43 Digest 1065, 55.

(f) *Edwards v. Jolliffe*, [1877] W.N. 120; 43 Digest 1066, 58.

(g) *Stoke Parish Council v. Price*, [1899] 2 Ch. 277; 33 Digest 34, 182.

(h) *Holmfirth Local Board v. Shore*, *supra*.

(i) 12 Halsbury's Statutes 23.

become a public well and as such vesting in the local authority, it was held that the authority were not the "owners" of the shaft within the meaning of the Act of 1872, *supra*, and were not liable to fence the shaft(*k*). A local authority are precluded from recovering a water rate in respect of a water supply from a standpipe, well or cistern vested in them, or constructed by them, for the gratuitous supply of water to the inhabitants of any part of their district(*l*).

It should be remembered that where there is a polluted well, etc., a local authority have power to close it in accordance with the provisions of section 140 of the Act of 1936 (see *post*, p. 175).

A parish council are empowered by section 125 of the Act of 1936(*m*), to utilise any well, spring or stream within their parish and provide facilities for obtaining water therefrom, and may execute any works, including works of maintenance or improvement, incidental to, or consequential on, any exercise of that power, provided that they are not entitled to interfere with the rights of any person, or to restrict any powers of a local authority in respect of a public well or other works.

CHARGES FOR WATER.

A local authority who supply water under the Act of 1936, to any premises for domestic purposes, are empowered by section 126(*n*) to levy a water rate, assessed on the annual value of the premises so supplied. A local authority are also empowered to enter into agreements for the supply of water by meter. Where, in accordance with section 127 of the Act of 1936(*o*), the Minister of Health has fixed a maximum charge per thousand gallons for a supply of water by a local authority, such authority may require that all water supplied by them to the undermentioned premises shall be taken by meter, viz.:—

- (a) any premises used as a house, whereof a part is used by the same occupier for any business, trade or manufacturing purpose for which water is required ;
- (b) any public institution ;
- (c) any hospital, sanatorium, school, club, hostel, assembly hall, place of public entertainment, restaurant, hotel, or licensed premises, within the meaning of that expression as used in the Licensing (Consolidation) Act, 1910 ; or

(*k*) *Knuckey v. Redruth R.D.C.*, [1904] 1 K.B. 382 ; 34 Digest 748, 1219.

(*l*) Sect. 124(2), Public Health Act, 1936 ; 29 Halsbury's Statutes 414.

(*m*) 29 Halsbury's Statutes 415.

(*n*) 29 Halsbury's Statutes 415.

(*o*) 29 Halsbury's Statutes 416.

- (d) any boarding-house capable of accommodating twelve or more persons, including the persons usually resident therein(*p*).

If a person supplied with water for domestic purposes otherwise than by meter desires to use the water for operating (a) a water-cooled refrigerating apparatus; (b) any apparatus depending while in use upon a supply of continuously running water; or (c) any apparatus used for softening water which requires water for cleaning, regenerating, motive power, or similar purposes, the local authority may require the water to be taken by meter, but this does not apply in the case of a water softener where only one is used and the water softened can be drawn off into a receptacle at one point only and is used solely for domestic purposes(*q*).

Where a local authority have provided a stand-pipe, or constructed a well or cistern, for the supply of water to persons living in the vicinity of such stand-pipe, well or cistern, they may recover water rates from the owner or occupier of every house within two hundred feet of the stand-pipe, well or cistern, in a similar manner as if a supply had been given on the premises(*r*). No water rate may be charged however where any premises has a wholesome water supply and the water from the stand-pipe, etc., is not used by the occupants of the premises in question. These provisions do not apply to any stand-pipe, well or cistern which is vested in the local authority by virtue of section 124 of the Act of 1936 (see *ante*, p. 167).

Under section 129 of the Act of 1936(*a*), a local authority are empowered to recover the water rate from the owner of those houses coming within the provisions of section 11(1) of the Rating and Valuation Act, 1925(*b*), and not from the occupier. If paid within the appropriate time, an owner is entitled to the same rate of allowance as he is entitled to in respect of the general rate, in accordance with paragraph (a) of section 11(1), *supra*.

BYELAWS WITH RESPECT TO WATER SUPPLY.

(a) **For the prevention of waste, etc.**—A local authority are empowered by section 132 of the Act of 1936(*c*) to make byelaws relating to the prevention of waste, undue consumption, misuse or contamination of water supplied by them.

(*p*) Sect. 127(2), Public Health Act, 1936; 29 Halsbury's Statutes 416.

(*q*) *Ibid*, sect. 127(3); 29 Halsbury's Statutes 416.

(*r*) *Ibid*, sect. 128; 29 Halsbury's Statutes 417.

(*a*) 29 Halsbury's Statutes 418.

(*b*) 14 Halsbury's Statutes 632.

(*c*) 29 Halsbury's Statutes 419.

Such byelaws may include provisions prescribing the size, nature, materials, strength and workmanship, and the mode of arrangement, connection, disconnection, alteration and repair, of the water fittings to be used, and may forbid any arrangement and the use of any water fittings which permit, or are likely to permit, waste, undue consumption, misuse, erroneous measurement or contamination of water. As in the case of certain other byelaws made under the Act of 1936, byelaws with respect to water supply must be revised at least once in every ten years(*d*).

A local authority are entitled to examine and test any water fittings used in connection with water supplied by them(*e*), and they may make a charge for any meter provided for the measurement of water(*f*).

If any person wilfully or by culpable negligence injures or suffers to be injured any water fittings belonging to a local authority or fraudulently alters the meter readings or fraudulently abstracts or uses water supplied by the local authority, he is liable to a penalty under section 135 of the Act of 1936(*g*).

(b) **With respect to wells, tanks and cisterns.**—A local authority are empowered to make byelaws with regard to wells, tanks and cisterns for the supply of water for human consumption in connection with buildings(*h*).

POWER OF LOCAL AUTHORITY TO REQUIRE HOUSES TO BE SUPPLIED WITH WATER.

The provision of a proper water supply to every house is a matter of prime importance from the public health standpoint and the powers and duties of local authorities under the Act of 1936 are of considerable importance.

(a) **Water supply for new houses.**—Section 137 of the Act of 1936, *post*, p. 171, deals with the provision of a sufficient water supply to new houses and empowers a local authority to reject the plans of a new house where they are not satisfied that a supply of wholesome water sufficient for domestic purposes will be provided. If the local authority approve the building plans but the provision of a proper water supply is not carried out, the authority may, by notice, prohibit the habitation of the house until such a supply is available.

(*d*) Sect. 132(6), Public Health Act, 1936 ; 29 Halsbury's Statutes 420.

(*e*) *Ibid.*, sect. 133 ; 29 Halsbury's Statutes 421.

(*f*) *Ibid.*, sect. 134 ; 29 Halsbury's Statutes 421.

(*g*) 29 Halsbury's Statutes 421.

(*h*) *Ibid.*, sect. 61(1) (ii) (*f*), *ante*, p. 9.

Section 137, Public Health Act, 1936.—New houses to be provided with sufficient water supply.

- (1) Where plans of a house are, in accordance with building byelaws, deposited with a local authority, the authority shall reject the plans unless—
 - (i) there is put before them a proposal which appears to them to be satisfactory for providing in, or within a reasonable distance of, the house a supply of wholesome water sufficient for the domestic purposes of the inmates; and
 - (ii) they are satisfied that the proposal can and will be carried into effect.

Any question arising under this subsection between a local authority and the person by whom or on whose behalf plans are deposited as to whether the local authority ought to pass the plans may on the application of that person be determined by a court of summary jurisdiction.

- (2) If, after any such plans as aforesaid have been passed, it appears to the local authority that the proposal for providing a supply of water has not been carried into effect, or has not resulted in a supply of wholesome water sufficient for the domestic purposes of the inmates being provided in, or within a reasonable distance of, the house, the authority shall give notice to the owner of the house, prohibiting him from occupying it, or permitting it to be occupied, until the authority, being satisfied that such a supply has been provided, have granted him a certificate to that effect and, until such a certificate has been granted, he shall not occupy the house or permit it to be occupied:

Provided that any person aggrieved by the refusal of the authority to grant such a certificate may apply to a court of summary jurisdiction for an order authorising the occupation of the house and, if the court is of opinion that a certificate ought to have been granted, the court may make an order authorising the occupation of the house, and such an order shall have the like effect as a certificate of the local authority.

- (3) Any person who contravenes the provisions of the last preceding subsection shall be liable to a fine not exceeding ten pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

It should be noted that this section replaces section 6 of the Public Health (Water) Act, 1878(i), which applied to rural districts only but the present section extends to the district of all local authorities. Under the repealed section 6, *supra*, a rural authority were required to issue a certificate in respect of each new house, stating that such house was supplied with a satisfactory water supply. Under section 137, *supra*, however, a certificate need only be granted where the local authority have taken action under subsection (2) and served a notice in respect of a new house which has not had provided a proper supply. Where the local authority

are satisfied in the first instance with the water supply, it would appear that the issue of a certificate is not necessary.

(b) **Water supply for existing houses.**—Section 138 of the Act of 1936, *infra*, enables a local authority to require the provision of a proper water supply to any occupied house, and they may serve a notice upon the owner requiring him, within a specified period, to do the necessary work. Subject to the limit of twenty pounds fixed by subsection (3), the authority are empowered to provide the water supply themselves if the owner fails to do so, and to recover the costs incurred from the person in default.

Section 138, Public Health Act, 1936.—Power of local authority to require any occupied house to be provided with sufficient water supply.

(1) Where a local authority are satisfied—

- (a) that any occupied house has not, either in the house or within a reasonable distance thereof, a supply of wholesome water sufficient for the domestic purposes of the inmates; and
- (b) that such a supply ought to be provided by the owner of the house; and
- (c) that, if such a supply is afforded by the authority or other water undertakers, there will not be payable by the consumer in respect of water supplied any charge in excess of the ordinary charge made in respect of a supply of water for domestic purposes to houses in the area to which such supply is given,

the authority may give notice to the owner requiring him within a time specified therein to provide, or secure the provision of, such a supply.

- (2) Where the local authority are so satisfied as aforesaid with respect to each of two or more houses, and are further satisfied that the needs of those houses can most conveniently be met by means of a joint supply, they may give notice accordingly under the preceding subsection to the owners of all those houses.
- (3) Subject to the provisions of the next succeeding section with respect to appeals, if such a notice as aforesaid is not complied with, the local authority may themselves provide, or secure the provision of, a supply of water to the house or houses in question and may recover any expenses reasonably incurred by them in so doing from the owner of the house, or, where two or more houses are concerned, from the owners of those houses in such proportions as may be determined by the authority or, in case of dispute, by a court of summary jurisdiction: Provided that an owner shall not be required to pay more than twenty pounds in respect of any one house.
- (4) Where any houses with respect to which the local authority are, by reason of notices not having been complied with, in a position to take action under the last preceding subsection are situate within the limits of supply of statutory water undertakers, and the aggregate amount of the water rates which would be payable annually by owners or occupiers of those houses at the rate

charged by the undertakers is such that a requisition could be made by those owners or occupiers under section thirty-five of the Waterworks Clauses Act, 1847, or under that section as modified by any enactment regulating the undertaking, the local authority may themselves make such a requisition, and the undertakers shall comply therewith as if it has been made by the owners or occupiers of the houses, and those owners or occupiers shall be deemed to have made the requisition and to have entered into an agreement with the undertakers to take a supply of water for the minimum period mentioned in the said section, or in the said section as so modified.

- (5) Where under this section a supply of water is furnished to a house by the local authority or other statutory water undertakers, water rates may be made on the premises and recovered as if the owner or occupier of the house had demanded and agreed to pay water rates for a supply.
- (6) Where under this section two or more houses in the occupation of different persons are supplied with water by a common pipe belonging to the owners or occupiers of those houses or parts of houses, or to some of them, the local authority may, when necessary, repair or renew the pipe and recover any expenses reasonably incurred by them in so doing from the owners or occupiers of the houses in such proportions as may be determined by the authority or, in case of dispute, by a court of summary jurisdiction.

This section replaces section 62 of the Public Health Act, 1875(*k*), but it should be noted that action is not confined so as to necessitate the report of the surveyor. The local authority have to be satisfied as to the necessity for action being taken under the section and it is quite competent now for the sanitary inspector to report upon the matter. In this connection it must be remembered that under the Consolidated Housing Regulations, 1925(*l*) and 1932(*m*), a sanitary inspector must report upon the adequacy and accessibility of the water supply of dwelling-houses inspected under the Housing Act, and the means adopted to prevent contamination.

Where a notice has been served by a local authority under the provisions of subsection (1) of section 138, *supra*, an owner may appeal against the terms of the notice in accordance with section 139, *infra*.

Section 139, Public Health Act, 1936.—Appeal by owner against requirements to provide water supply.

- (1) If a person on whom a notice has been served under subsection (1) of the last preceding section objects to the requirement of the local authority on any of the following grounds, that is to say that :—

(*k*) 13 Halsbury's Statutes 651.

(*l*) S.R. and O., 1925, No. 866.

(*m*) S.R. and O., 1932, No. 648.

- (a) the supply is not required ;
- (b) the time allowed to him for providing the supply is insufficient ;
- (c) the authority ought themselves to provide a supply of water for the district, or part of the district, in which the house is situate, or to render the existing supply of water wholesome ; or
- (d) part of the expenses of providing the supply, or of rendering the existing supply wholesome, ought to be borne by the authority,

he may, within twenty-eight days after service on him of the notice, appeal to the Minister and, if he so appeals, the authority shall not take any further steps under the notice until they have been authorised so to do by the Minister.

- (2) Upon an appeal to him under this section the Minister may either disallow the requirement of the local authority or allow it with or without modifications, and, if he allows it, shall order the authority to proceed with the proposed works, or those works as varied by the order, either forthwith or in the event of the works not being executed by the owner or owners within a time limited by the order.
- (3) The Minister may by his order, if he thinks it equitable so to do, apportion the expenses of providing the supply between the owner or owners concerned and the local authority, or may vary any such apportionment which the authority propose to make, so, however, that in no case shall any owner be required to pay more than twenty pounds in respect of any one house.

Although the Minister is not specifically required to do so, he may hold a local inquiry regarding the matter if he deems it desirable⁽ⁿ⁾.

In towns and urban areas, the question of water supply is usually of less importance than in the case of rural districts. In the former areas, the mains of the local authority or water undertakers are usually found in all streets and only on rare occasions nowadays are houses found without a proper water supply. In some towns, however, the sufficiency of the water supply may be open to question and the provision of an adequate supply in each house is to be aimed at on every occasion. In cases where the water supply is not provided in the house itself, difficulty may be experienced in deciding what is a "reasonable distance" within the meaning of section 138, *supra*. There have been no legal decisions on the matter but it may be, as a result of the wording of section 128 of the Act of 1936 (see *ante*, p. 169) that a distance of two hundred feet can be considered as the maximum distance at which a water supply is to be deemed to be within a reasonable distance of a dwelling-house.

(n) Sect. 318, Public Health Act, 1936 ; 29 Halsbury's Statutes 523.

EXAMINATION AND SAMPLING OF WATER.

Where it is necessary for the sanitary inspector to report upon the water supply of any premises, the report should include information relating, *inter alia*, to the following:—

- (i) premises concerned ;
- (ii) number of occupants ;
- (iii) situation of water supply and distance from house (if inside supply not available) ;
- (iv) kind of supply—
 - (a) mains ;
 - (b) wells—deep or shallow ;
 - (c) springs ;
 - (d) rivers or ponds ;
 - (e) roof or other impervious surface ;
- (v) method of supplying water to house ;
- (vi) possible sources of pollution ;
- (vii) results of any water samples examined ;
- (viii) any shortage of water.

In rural areas, water from wells is frequently found to be contaminated and when inspecting wells, the water of which is used for domestic purposes, care should be taken to record full details as to the type of well—deep or shallow—together with the method of construction and means of raising the water. In every case where there is any doubt as to the suitability of the water for domestic purposes, a sample should be obtained and submitted for chemical *and* bacteriological examination. It is impossible to form a reliable opinion as a result of a chemical examination only, and in every case, the water should be reported upon by the bacteriologist.

POWER TO CLOSE OR RESTRICT USE OF POLLUTED WATER SUPPLY.

Where a local authority are satisfied that the water in any well, tank, or other source of supply *not vested in them*, which is used or likely to be used for domestic purposes or in the preparation of food or drink for human consumption, is unfit for such purposes, they may apply to a court of summary jurisdiction for an order under section 140 of the Act of 1936, *infra*, closing or cutting off such supply, either permanently or temporarily.

Section 140, Public Health Act, 1936.—Power to close, or restrict use of water from polluted source of supply.

- (1) If a local authority are of opinion that the water in or obtained from any well, tank or other source of supply not vested in them, being water which is, or is likely to be, used for domestic purposes, or in the preparation of food or drink for human consumption, is, or is likely to become, so polluted as to be prejudicial to health, the authority may apply to a court of summary

jurisdiction and thereupon a summons may be issued to the owner or occupier of the premises to which the source of supply belongs, or to any other person alleged in the application to have control thereof.

- (2) Upon the hearing of the summons, the court may make an order directing the source of supply to be permanently or temporarily closed or cut off, or the water therefrom to be used for certain purposes only, or such other order as appears to the court to be necessary to prevent injury or danger to the health of persons using the water, or consuming food or drink prepared therewith or therefrom.

The court shall hear any user of the water who claims to be heard, and may cause the water to be analysed at the cost of the local authority.

- (3) If a person on whom an order is made under this section fails to comply therewith, the court may, on the application of the local authority, authorise them to do whatever may be necessary for giving effect to the order, and any expenses reasonably incurred by the authority in so doing may be recovered by them from the person in default.

Section 141 of the Act of 1936(o) includes as a "statutory nuisance" within the meaning of Part III of the Act (see *post*, p. 219), any well, tank, cistern, or water-butt used for the supply of water for domestic purposes which is so placed, constructed, or kept as to render the water therein liable to contamination or prejudicial to health.

POLLUTION OF WATER BY GAS WASHINGS.

Section 68, Public Health Act, 1875(p), imposes a penalty upon any person engaged in the manufacture of gas who—

- (a) causes or suffers to be brought or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or
- (b) wilfully does any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water is fouled.

A daily penalty is imposed for a continuance of the offence after 24 hours' notice from the local authority. A person who contravenes this section may be restrained by injunction(q). This section is not repealed by the Public Health Act, 1936.

(o) 26 Halsbury's Statutes 426.

(p) 13 Halsbury's Statutes 653.

(q) *Batcheller v. Tunbridge Wells Gas Co.* (1901), 65 J.P. 680; 25 Digest 487, 100.

CHAPTER 8.

REFUSE.

INTRODUCTION.

This chapter deals with that section of local administration now usually included under the title of "Public Cleansing," and is concerned with the collection and disposal of house and trade refuse, and the cleansing and watering of streets.

The control of the public cleansing service may be placed in the hands of one of a number of officers of the local authority. In the larger towns, for example, the work is often sufficiently extensive to warrant a separate department, under the control of an executive officer, usually designated either "Director of Public Cleansing" or "Cleansing Superintendent." In a few cases the title of "General Manager" is used and occasionally the work forms part of the duties of the Manager of the Transport Department. In other districts, particularly those areas with populations of less than 75,000, the cleansing service is controlled either by the sanitary inspector or the surveyor. Part IV of the Local Government Act, 1933(*a*), enables a local authority to appoint officers for the execution of the powers of the authority, and they must appoint a sanitary inspector and a surveyor, who may be one and the same person. The duties of a sanitary inspector may include those relating to public cleansing(*b*). A local authority are not bound to appoint an officer specially for the control of the public cleansing service but they may do so if they consider it necessary for the efficient discharge of their duties(*c*).

The powers of a local authority with regard to the public cleansing service, including the appointment of officers and staff, may be delegated to a committee(*d*).

(*a*) 26 Halsbury's Statutes 358.

(*b*) Sanitary Officers (Outside London) Regulations, 1935, S. R. and O., 1935, No. 1110; Art. 27 (10); see *ante*, p. 46.

(*c*) Sects. 106 and 107, Local Government Act, 1933; 26 Halsbury's Statutes 361.

(*d*) *Ibid*, sect. 85; 26 Halsbury's Statutes 352.

REFUSE.

House and trade refuse consists of a mixture of many materials of a widely differing character. A knowledge of the constituents of refuse is of considerable importance, both in connection with refuse collection, and, more especially, refuse disposal. In his Report(e) on London Refuse, Dawes paid considerable attention to this point and much valuable information regarding the composition of London refuse and its seasonal variations is contained in the Report. The following table(f) shows the average composition of the refuse at various seasons of the year.

TABLE X
Seasonal Analyses of London Refuse, 1925-26.

Content of refuse.	Spring.	Summer.	Autumn.	Winter.
	%	%	%	%
Fine dust minus 5/16"	28.05	16.93	28.05	35.84
Fuel clinker over 5/16", but minus 3/4"	15.18	8.26	15.18	17.76
Fuel cinder over 3/4", but minus 1 1/2"	12.94	7.05	12.94	14.07
Putrescible matter	12.57	24.07	12.57	8.82
Paper	14.73	23.54	14.73	9.84
Metal: containers and other metals	3.54	4.71	3.54	2.98
Rags, including bagging, etc.	1.75	2.05	1.75	1.64
Glass: bottles and cullet	3.23	3.28	3.23	2.42
Bone	1.03	0.80	1.03	1.96
Combustible debris, unclassified	3.89	6.92	3.89	3.40
Incombustible debris, unclassified	3.09	2.39	3.09	2.27

Not only is a knowledge of the composition of refuse of importance in emphasising the necessity for the adoption of proper methods of public cleansing—temporary storage, collection and disposal—but it is also essential in order to design such methods so as to function properly and economically. In designing a scheme for the disposal of refuse in any particular district, it is of the utmost importance that the average composition of the refuse should be ascertained, together with the seasonal variations. This is equally as important as obtaining the weight of refuse to be collected and dealt with (see *post*, p. 206).

(e) Public Cleansing, being a Report of an Investigation into the Public Cleansing Service in the Administrative County of London. 1929. J. C. Dawes. H.M.S.O., London.

(f) *Ibid*, p. 55.

REFUSE RECEPTACLES.

PROVISION OF REFUSE RECEPTACLES.

(a) **For House Refuse.**—Where a local authority undertake the removal of house refuse (see *post*, p. 184) for the whole or part of their district, they may, by notice under section 75 of the Act of 1936, *infra*, require the owner or occupier of any building to provide such number of covered dustbins for the reception of refuse, as they may approve. It will be observed that the authority may specify the material, size and construction of the dustbin, but they cannot require the provision of a new receptacle if the existing dustbin is satisfactory in the above respects. If the notice referred to above is not complied with, or if the dustbin although provided is not maintained in good order, or is not replaced by a new bin when worn out, the local authority may provide a new dustbin and recover the expenses incurred from the person in default, who is also liable to a fine.

Section 75, Public Health Act, 1936.—Regulation dustbins.

- (1) A local authority who, as respect their district or any part thereof, have undertaken the removal of house refuse may by notice require the owner or occupier of any building within the district, or, as the case may be, within that part of the district, to provide such number of covered dustbins for the reception of house refuse of such material, size and construction as the authority may approve :

Provided that this subsection shall not entitle an authority to require the replacement of any dustbin in use at the commencement of this Act so long as it is of suitable material, size and construction and properly covered and in proper condition.

Any person aggrieved by a requirement of the local authority under this subsection may appeal to a court of summary jurisdiction.

- (2) If a person fails to comply with a notice under the preceding subsection, or fails to maintain in good order and condition any dustbin which under that subsection he has been required to provide, or fails to replace any such dustbin when worn out by a new dustbin of a material, size and construction approved by the local authority, the authority may provide such dustbin, or such new dustbin, as may be required and may recover the expenses reasonably incurred by them in so doing from the person in default, and, without prejudice to the right of the authority to exercise that power, he shall be liable to a fine not exceeding twenty shillings.
- (3) A local authority may, as respects their district or any part thereof, in lieu of requiring the owners or occupiers of buildings to provide and maintain dustbins for the reception of house refuse, undertake themselves to provide and maintain such dustbins as may be necessary and, so long as such an under-

dustbin provided by them such annual charge not exceeding two shillings and sixpence as they think proper.

Any such charge shall become due on the first day of April in each year and may be recovered as part of the general rate in respect of the premises for which the dustbin has been provided, but without prejudice to the rights of any person under any tenancy agreement :

Provided that, if on the first day of April the premises are unoccupied, the charge shall not be recoverable until they become occupied and, if they remain unoccupied during the whole of the local financial year, the charge shall be treated as irrecoverable.

Subsection (3), *supra*, enables an authority themselves to provide and maintain dustbins, making an annual charge in respect thereof not exceeding 2/6 per bin. The amount charged is payable on the 1st of April each year, and may be collected with the general rate. This procedure is incorporated in the general law for the first time but it has been included in a number of local acts, working very well in practice. The expense, both in money and time, involved in the service of notices requiring the provision of dustbins, is considerable, compared with the trifling service rendered, and the powers contained in this subsection are likely to prove of considerable value to local authorities and landlords alike. A further advantage is likely to arise as a result of the standardisation of refuse receptacles, which should assist considerably the work of refuse collection.

The following specifications for dustbins, adopted by the Birmingham Corporation(*g*), are typical examples and there is a general tendency towards the adoption of uniform dustbins of these types.

TABLE XI

Specifications for Dustbins.

	Large bin.	Small bin.
Height	24 in.	20 in.
Diameter	18 "	16 "
Body	22 B.W.G. Sheet iron.	22 B.W.G. Sheet iron.
Bottom	21 "	21 "
Weight without lid	25 lb.	19 lb.
Weight with lid	28 "	21½ "

The size of dustbin adopted is of considerable importance. Whilst it should be of sufficient size to retain for the temporary

period necessary between the emptying of the bin, the amount of refuse produced by the household, it should not be so large as to encourage the deposit of refuse which could be disposed of by the householder. It has been shown in several towns, that a reduction in the size of dustbin has been followed by a diminution in the quantity of refuse produced, whereas in other towns or districts where large refuse receptacles are in use, the quantity of refuse produced is considerably in excess of the former towns.

Under section 61 of the Act of 1936 (see *ante*, p. 9) a local authority are empowered to make byelaws as to buildings, with respect, *inter alia*, to ashpits, and such byelaws will presumably deal with the provision of refuse receptacles at new buildings. In addition, however, action can be taken under section 75, *ante*, p. 179, as soon as the house is occupied and the removal of the house refuse becomes necessary.

Any person aggrieved by the requirements of the local authority under section 75, *supra*, may appeal to a court of summary jurisdiction and the justices will decide as to the reasonableness of the authority's requirements.

Section 343 of the Act of 1936(*h*) defines "dustbin" as a movable receptacle for the deposit of ashes or refuse. It will be remembered that section 11(1) of the Public Health Acts Amendment Act, 1890(*i*), defined the term "ashpit" as including any ashtub or other receptacle for the deposit of ashes, faecal matter or refuse. It should be noted that the power to require the provision of dustbins extends to all buildings from which "house refuse" is removed. This does not mean only dwelling-houses, as the refuse from certain other premises may, in fact, be "house refuse" (see *post*, p. 187).

(b) **For street refuse.**—Section 76(1), *infra*, enables a local authority to provide receptacles for the deposit of refuse in streets and public places.

Section 76(1), Public Health Act, 1936.—Provisions as to deposit and disposal of refuse

(1) A local authority may provide—

- (a) receptacles for refuse in streets and public places ;
- (b) places for the deposit of refuse ;
- (c) plant or apparatus for treating or disposing of refuse.

In districts where Part II of the Public Health Act, 1925(*k*),

(h) 29 Halsbury's Statutes 537.

(i) 13 Halsbury's Statutes 827.

(k) 13 Halsbury's Statutes 1119.

is in force^(l), a local authority may provide and maintain in or under any street, orderly bins or other receptacles, of such dimensions and in such positions as the authority may determine, for the collection and temporary storage of, *inter alia*, street refuse and waste paper^(m). In providing orderly bins or other receptacles under the above provisions, an authority are not entitled to hinder the reasonable use of the street by the public or any person entitled to use the same, or to create a nuisance to any adjacent owner or occupier⁽ⁿ⁾. A local authority cannot exercise the foregoing powers in relation to any street which is a main road maintained by a county council, without the consent of that council, or so as to obstruct or render less convenient the access to or exit from any station or goods yard belonging to a railway company, or any premises belonging to other statutory undertakers. The local authority may not place any street bin on any bridge carrying a railway over any street or within ten feet of the abutments of any such bridge without the consent of the railway company^(o).

INFECTIOUS RUBBISH.

Section 156 of the Act of 1936, *infra*, makes it an offence if a person places in a dustbin or ashpit any matter he knows to have been exposed to infection.

Section 156, Public Health Act, 1936.—Infectious matter not to be placed in dustbins.

- (1) A person who places, or causes or permits to be placed, in a dustbin or ashpit any matter which he knows to have been exposed to infection from a notifiable disease, and which has not been disinfected, shall be liable to a fine not exceeding five pounds.
- (2) The local authority shall give notice of the provisions of this section to the occupier of any house in which they are aware that there is a person suffering from a notifiable disease.

It should be noted that the infection must be from a notifiable disease^(p) and that the local authority must give notice of the provisions of the section to the occupier of any house in which they are aware that there is a person suffering from any such disease. This is usually done by means of a printed leaflet which is handed to the householder at the time the enquiries are made regarding each case of notifiable disease^(q).

(l) As to method of adoption of this Part of the Act, see sects. 3-5; 13 Halsbury's Statutes 1116.

(m) Sect. 13(1), Public Health Act, 1925; 13 Halsbury's Statutes 1119.

(n) *Ibid*, sect. 13(2); 13 Halsbury's Statutes 1119.

(o) *Ibid*, sect. 16(1); 13 Halsbury's Statutes 1119.

(p) For definition of "notifiable disease" see *post*, p. 418.

(q) See *post*, p. 424.

EXPLOSIVES IN REFUSE.

In accordance with the Explosives Act, 1875(*r*), the Home Secretary has made an Order(s) dealing with the deposit of explosives in refuse receptacles. The Order provides that explosives must not be placed in any receptacle or place appropriated for refuse, and must not be handed or forwarded to any dustman or other person employed in the removal of refuse, unless due notice has been given to such dustman or person. Explosives must not be conveyed in any carriage or boat used for the removal of refuse. A penalty is imposed upon any person committing an offence against the Order, and also upon any person owning the carriage or boat, the person in charge thereof, and the owner of the explosives, unless the person charged proves that he had supplied proper means and issued proper orders for the due observance of the rules laid down in the Order.

ROOMS OVER ASHPITS NOT TO BE USED FOR CERTAIN PURPOSES.

Section 49 of the Act of 1936 (see *ante*, p. 137), prohibits a room over, *inter alia*, any midden or ashpit, being used as a living room, sleeping room, or workroom.

PROTECTION OF FOODSTUFFS FROM CONTAMINATION FROM REFUSE RECEPTACLES.

With a view to the protection of certain foodstuffs from contamination from refuse receptacles, various provisions have been passed. Sections 8 and 13 of the Food and Drugs Act, 1938(*t*), provide that the occupier of any room to which those sections apply, shall not use it for the purpose of selling, preparing, storing, or keeping food if, *inter alia*, any ashpit is in the room or communicates directly with it or is so placed that offensive odours therefrom can penetrate the room.

Under the Public Health (Meat) Regulations, 1924(*u*), the occupier of any room(*x*) in which meat is sold, exposed for sale, deposited for the purpose of sale, or of preparation for sale, must not, *inter alia*, allow any ashpit to be within such room, or to communicate directly with it or be so placed that offensive odours therefrom can penetrate the room.

Similar provisions are contained in the Milk and Dairies

(*r*) 8 Halsbury's Statutes 385.

(*s*) S.R. and O., 1924, No. 1129.

(*t*) 31 Halsbury's Statutes 257, 261.

(*u*) S.R. and O., 1924, No. 1432, art. 20.

(*x*) "Room" includes a shop, cellar, passage or other space forming the whole or part of a building other than a slaughterhouse, *ibid*, art. 2.

Order, 1926(y), which provides that milk must not be deposited or kept in any place where it is liable to become contaminated or infected, and especially in any room or part of a building which communicates directly by door, window or otherwise with, *inter alia*, any receptacle for ashes or other refuse. In addition, milk must be protected from contamination by dust, dirt or flies.

REFUSE COLLECTION.

HOUSE AND TRADE REFUSE.

A local authority may, and if required by the Minister of Health must, undertake the removal of house refuse and the cleansing of earthclosets, privies, ashpits and cesspools, in accordance with section 72 of the Act of 1936, *infra*.

Section 72, Public Health Act, 1936.—Removal of house refuse, cleansing of ashpits, etc.

- (1) A local authority may, and if required by the Minister shall, undertake the performance of all or any of the following services, that is to say—
 - (a) the removal of house refuse ;
 - (b) the cleansing of earthclosets, privies, ashpits and cesspools or any of them,
 in either case, as respects either the whole or any part of their district.
- (2) If a local authority who, as respects their district or any part thereof, have undertaken the removal of house refuse, or the cleansing of earthclosets, privies, ashpits or cesspools, receive notice from the occupier of any premises within the district or, as the case may be, within that part of the district, requiring them to remove any house refuse from those premises or, as the case may be, to cleanse any earthcloset, privy, ashpit or cesspool belonging to or used by the occupants of those premises, and, without reasonable excuse, fail to comply with the notice within seven days, the occupier of the premises may recover summarily as a civil debt from the authority the sum of five shillings for every day during which the default continues after the expiration of the said period.
-
- (5) A local authority who have under this section resolved to undertake the performance of any service shall not, if their resolution was passed in compliance with a requirement of the Minister, rescind it without his consent.

It will be seen that the work of refuse collection or the cleansing of earthclosets, etc., may be carried out in the district of a local authority as a whole, or be confined to a part only. An authority may also restrict the work of cleansing to one type of convenience only(z), and they may rescind an

(y) S.R. and O., 1926, No. 821, art. 14.

(z) Stainland and Holywell Green Industrial Corn and Provision Society v. Stainland Urban Council, [1906] 1 K.B. 233 ; 38 Digest 237, 664.

undertaking to remove refuse or cleanse earthclosets, etc., and thereupon their liability for such removal or cleansing ceases(a), but it should be noted that under section 72(5), *ante*, p. 184, an authority cannot rescind a resolution undertaking such removal or cleansing which was passed at the direction of the Minister of Health, without the Minister's consent.

A local authority are not bound to empty cesspools upon demand, as in a case where the authority decided to empty them once in every three months (and more frequently only if paid for the additional service), it was held that they had a reasonable excuse (see section 72(2), *ante*, p. 184) for not emptying a cesspool within three months from the date of the last emptying without payment(b).

Where a local authority have undertaken the work of refuse removal, they may make byelaws for assisting the carrying out of the work, in accordance with subsection (3) of section 72, *infra*.

Section 72(3), Public Health Act, 1936.—Removal of house refuse, cleansing of ashpits, etc.

(3) A local authority who as respect their district or any part thereof have undertaken the removal of house refuse may make byelaws for the area to which their undertaking may for the time being extend—

- (a) imposing on the occupiers of premises duties in connection with the removal in order to facilitate the work which the authority have undertaken ;
- (b) where a local authority themselves provide dustbins, requiring that those dustbins shall be used ;
- (c) prohibiting the deposit of liquid matter in dustbins ;
- (d) regulating the deposit of refuse in ashpits or dustbins ; and
- (e) prohibiting any person from removing any matter which the authority have undertaken to remove, not being matter produced on his own premises which he intends to remove for sale, or for his own use, and which is kept in the meantime so as not to be a nuisance.

The Model Byelaws(c) usually provide that—

- (a) Where the local authority have undertaken the removal of house refuse not less frequently than once a week ; and
 - (i) any premises are provided with one or more dustbins ; and
 - (ii) the authority by a notice duly served upon the occupier of those premises specify the days on which and the hour at which they will remove house refuse from the premises, the occupier must place all house refuse in a dustbin and place such dustbin in a position on the premises which will—
 - (a) be conveniently accessible from the nearest street used as a means of access to the premises for the removal of refuse ; and

(a) *Whitbread and Co. v. Staines R.D.C.*, [1925] Ch. 89 ; 38 Digest 237, 661.

(b) *Leck v. Epsom R.D.C.*, [1922] 1 K.B. 383 ; 38 Digest 237, 660.

(c) Ministry of Health, Model Byelaws, Series 1A.

(b) not necessitate the removal of the refuse through a dwelling-house, if other means of access are available.

(b) Liquid matter must not be deposited in the receptacle.

Where a local authority do not undertake the work of refuse removal or the cleansing of earthclosets, privies, ash-pits, and cesspools, they may make byelaws requiring the occupiers of premises to do so, in accordance with subsection (4), *infra*.

Section 72(4), Public Health Act, 1936.—Removal of house refuse, cleansing of ashpits, etc.

(4) A local authority who as respects any part of their district have not undertaken the performance of the service in question may make byelaws requiring the occupiers of premises in that part of the district to remove at specified intervals their house refuse or, as the case may be, to cleanse at specified intervals their earthclosets, privies, ashpits and cesspools.

Section 74 of the Act of 1936, *infra*, enables a local authority to undertake the removal of refuse or the cleansing of any earthcloset, privy, ashpit or cesspool which they are not obliged to remove or empty under section 72, *ante*, p. 184, upon the request of the occupier of the premises and upon the payment of such charge as the authority think fit. It should be noted that this section also empowers a local authority to remove refuse or empty earthclosets, etc., more frequently than they are legally required to do, and make a charge for the additional service.

Section 74, Public Health Act, 1936.—Power of local authority in certain cases to remove refuse or cleanse cesspools, etc., on behalf of owner or occupier.

(1) A local authority may at the request of the owner or occupier of any premises remove therefrom any refuse or cleanse any earthcloset, privy, ashpit or cesspool belonging thereto, which they are under no obligation to remove or cleanse, or may carry out such removal or cleansing more frequently than they are under any obligation to do, and in either case may make such charge, if any, as they think fit:

Provided that nothing in this subsection shall be construed as empowering a local authority to undertake thereunder a general collection of trade refuse, or of any kind of trade refuse, from premises within their district, or from premises within any part of their district.

(2) A local authority may at the request of the owner or occupier of any premises undertake to dispose of any refuse which he may deliver at a place appointed by them, and may make such charge, if any, for so doing as they think fit.

If a local authority, having undertaken to cleanse privies, etc., create a nuisance owing to inefficient cleansing, they cannot take proceedings against the owner under the nuisance sections(d) with a view to the abatement of the nuisance by

the substitution of waterclosets for the privies(*e*). A local authority are not entitled to refuse to cleanse privies because the privies do not meet with their approval(*f*). But a defective privy may be "insufficient" closet accommodation within the meaning of section 44 of the Act of 1936 (see *ante*, p. 141) and the local authority might call for its conversion to a watercloset(*g*).

What is "house refuse" and "trade refuse." —Under section 72 of the Act of 1936 (see *ante*, p. 184), a local authority are not required to remove free of charge any trade refuse but section 73, *infra*, enables them to undertake the removal either of all classes of trade refuse or only particular kinds of such refuse. The section also requires an authority to make a charge for such removal.

Section 73, Public Health Act, 1936.—Removal of trade refuse and other matters.

- (1) A local authority may undertake the removal of trade refuse, or any kind of trade refuse, from premises within their district or from premises within any part of their district, and an authority who have so undertaken shall at the request of the occupier of any premises within the district, or, as the case may be, within that part of the district, remove from his premises any trade refuse to which their undertaking relates and, if without reasonable excuse they fail to do so within seven days after the request, the occupier may recover from them summarily as a civil debt the sum of five shillings for every day during which the default continues after the expiration of the said period.
- (2) A local authority shall make reasonable charges for removing trade refuse under this section.
- (3) Any question arising under this section as to what is to be considered as trade refuse, or trade refuse to which the authority's undertaking relates, or as to the reasonableness of any charges made by them, may, on the application of either party, be determined by a court of summary jurisdiction.

The question as to what constitutes "house refuse" and "trade refuse" has been the subject of much discussion and there have been numerous cases on the point. In spite of many judicial decisions, however, the position is by no means clear and difficulties still occur when deciding as to which class a particular type of refuse belongs. It is a matter for regret that the new Act does not clarify the position beyond placing upon a court of summary jurisdiction the duty of deciding each case on its merits.

(*e*) *Barnett v. Laskey* (1898), 68 L.J.Q.B. 55; 38 Digest 236, 659.

(*f*) *Pegg and Jones, Ltd. v. Derby Corpn.*, [1909] 2 K.B. 511; 38 Digest 237, 666.

(*g*) *Nicholl v. Epping U.D.C.*, [1899] 1 Ch. 844; 38 Digest 228, 590, followed in *Carlton Main Colliery Co., Ltd. v. Hemsworth R.D.C.*, [1922] 2 Ch. 609; 38 Digest 228, 591.

The only statutory definitions are those contained in section 304 of the Public Health (London) Act, 1936, which are as follows:—

“house refuse” means ashes, cinders, breeze, rubbish, nightsoil or filth, but does not include trade refuse;

“trade refuse” means the refuse of any trade, manufacture or business or of any building materials.

“House refuse” does not include dust and ashes, the exclusive product of manufactories(*h*). Under section 128 of the Metropolis Management Act, 1855, it was held that ashes arising from coal burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber in connection with the business of a pianoforte manufacturer, was trade and not house refuse(*i*). Under the Metropolitan Management Acts it was held that a local authority were bound to remove refuse from a workhouse although such premises were rated below those of other premises in the parish(*k*). Under the same Acts it was held that an authority were not bound to remove articles improperly placed in a dustbin such as “broken glass, shoes, and other things which it might not be convenient otherwise to get rid of.” The local authority are only required to remove such refuse as might become prejudicial to health if allowed to accumulate. Where such articles as broken glass, etc., improperly placed in the refuse receptacles were removed and afterwards appropriated by the servants of the local authority, the contractor employed for the collection and removal of refuse was not entitled to compensation from the authority, on the ground that his contract only included such refuse as the authority were bound to remove(*l*). It was also held under the same Acts that the clinkers resulting from the boilers belonging to an hotel which were used to generate steam for supplying power for electric lighting and for warming and cooking and other purposes of the hotel, were not the refuse of a trade, manufacture, or business(*m*). In a case taken under section 42 of the Public Health Act, 1875(*n*), on the other hand, it was held that clinkers from the boilers of a steam laundry were not “house refuse”(*o*). In a case concerning a block

(*h*) *Lynden v. Standbridge* (1857), 2 H. and N. 45; 38 Digest 234, 641.

(*i*) *Gay v. Cadby* (1877), 2 C.P.D. 391; 38 Digest 234, 642.

(*k*) *Holborn Guardians v. St. Leonard's Vestry, Shoreditch* (1876), 2 Q.B.D. 145; 38 Digest 235, 650.

(*l*) *Collins v. Paddington Vestry* (1879), 48 L.J.Q.B. 345; 38 Digest 236, 656.

(*m*) *St. Martin's Vestry v. Gordon* (1890), 59 L.J.M.C. 131; 38 Digest 235, 647.

(*n*) 13 Halsbury's Statutes 643.

(*o*) *London and Provincial Laundry Co. v. Willesden L.B.*, [1892] 2 Q.B. 271; 38 Digest 235, 648.

of residential flats it was held^(p) that the clinkers and ashes from the furnaces of an electric light plant were trade refuse within the meaning of section 33 of the Public Health (London) Act, 1891^(q). It was held that ordinary refuse from an hotel, comprising such things as ashes from grates, sawdust strewn on the kitchen floors for the sake of cleanliness, empty sauce bottles and preserve tins, straw packing cases for bottles, tea leaves, waste paper, egg-shells, lemon peel, the dust from the rooms and staircases, and from time to time quantities of broken crockery ware and glass, was "house refuse" within the meaning of the Public Health (London) Act, 1891. The Court expressed the opinion that in considering whether refuse is "house refuse" or "trade refuse," regard must be had to its physical nature and character, and not to the process or circumstances by which it is accumulated^(r). In the case of a teashop for providing customers with refreshments and food for consumption on the premises, some of the food being cooked or prepared therein, the refuse which consisted of ashes and clinkers, coffee grounds, newspapers, cabbage leaves, egg-shells, dust and general dirt, broken crockery, tea leaves, potato parings, scrapings from the sink and sweepings from the rooms, but not including scraps left by customers which were given away, was held to be "house refuse" within the meaning of the Public Health (London) Act, 1891, and the local authority were bound to remove it^(s).

From the cases referred to in the preceding paragraph it will be seen that the courts in considering the difference between house and trade refuse, have held that the character of the refuse rather than its place of production is to be the determining factor. Hence, refuse from hotels, cafes, restaurants, and similar premises, is mainly, if not entirely, house refuse. In this connection it must be remembered that under subsection (2) of section 72, *ante*, p. 184, a local authority are not in default until the expiration of seven days from the request by an occupier to remove refuse. In other words, an authority cannot be required to remove refuse more frequently than once a week. In the case of hotels and similar premises where large quantities of refuse are produced and a weekly collection would be quite insufficient, there seems to be no reason why the local authority should not make a charge for any further service rendered in addition to the once-weekly

(p) *St. Margaret's Vestry v. Queen Anne Mansions Co.* (1893), 57 J.P. Jo. 277.

(q) 11 Halsbury's Statutes 1046.

(r) *Westminster Corpn. v. Gordon Hotels Ltd.*, [1906] 2 K.B. 39; 38 Digest 235, 645.

(s) *Lyons and Co. v. London Corpn.*, [1909] 2 K.B. 588; 38 Digest 235, 646.

collection, and in this connection reference should be made to section 74 of the Act of 1936 (see *ante*, p. 186) and to the case of *Leck v. Epsom R.D.C.* (see *ante*, p. 185).

GARDEN REFUSE.

In some cases, the collection of garden refuse presents a problem of some magnitude. There is no legislation dealing with the matter and no cases have been heard in the courts. In many towns garden refuse is removed along with the ordinary house refuse, without charge, provided the quantity is not large. Where, however, a considerable amount of garden refuse is produced, it is classed as trade refuse and charged for at the usual rates.

"TOTTING."

The practice of "totting"—the removal of selected articles or materials from refuse receptacles or tips—was prevalent in many areas until quite recently, including London(*t*). Although the repealed section 42 of the Public Health Act, 1875(*u*), imposed a penalty upon any person who removed any material a local authority were authorised by that section to remove, it has not been an easy matter to prevent the sorting of refuse in dustbins and on refuse tips. Subsection (3) of section 76 of the Act of 1936, *infra*, makes the position clearer and definitely prohibits the sorting of refuse in bins and in any place of deposit provided by a local authority. "Totting" is a most objectionable and insanitary practice and every effort should be made to stamp it out.

Section 76(3), Public Health Act, 1936.—Provisions as to deposit and disposal of refuse, and for prohibiting interference with dustbins and refuse tips.

- (3) It shall not be lawful for any person, other than a person employed by the local authority in connection with the removal and disposal of refuse—

- (a) to sort over or disturb the contents of any dustbin when placed in any street or forecourt for the purpose of its contents being removed by the local authority; or
- (b) to sort over or disturb the material deposited in any place provided by the authority for the deposit of refuse; and a person who contravenes any of the provisions of this subsection shall be liable to a penalty not exceeding five pounds

In accordance with the Salvage of Waste Materials (No. 1) Order, 1940(*x*), no person may remove an article deposited for collection by the local authority without the consent of the authority.

(*t*) See Dawes, J. C., *loc. cit.*, p. 18 *et seq.*

(*x*) S.R. and O., 1940. No. 1950.

(*u*) 13 Halsbury's Statutes 643.

SECONDARY MEANS OF ACCESS TO HOUSES FOR REFUSE COLLECTION.

Section 55 of the Act of 1936, *infra*, requires a local authority to reject any building plans which do not show satisfactory means of access from the house to a street for the purpose of the removal of refuse and faecal matter. Further, it is an offence for any person to close or obstruct any means of access provided for the above purpose.

Section 55, Public Health Act, 1936.—Means of access to houses for removal of refuse, etc.

- (1) Where plans for the erection or extension of a house are, in accordance with building byelaws, deposited with a local authority, the local authority shall reject the plans, unless it is shown to them that satisfactory means of access from the house to a street for the purpose of the removal of refuse and faecal matter can, and will, be provided :

Provided that this subsection shall not apply in relation to houses erected in accordance with plans and specifications approved by the Minister in connection with housing operations to which section ninety-nine of the Housing Act, 1925, applies.

Any question arising under this subsection between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether any means of access proposed to be provided can be provided and ought to be accepted by the authority as satisfactory may on the application of that person be determined by a court of summary jurisdiction.

- (2) It shall be unlawful for any person except with the consent of the local authority to close or obstruct the means of access by which refuse or faecal matter is removed from any house, and the local authority in giving their consent may impose such conditions as they think fit with respect to the improvement of any alternative means of access, or the substitution of other means of access.

Any person who contravenes the provisions of this subsection shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

- (3) Any byelaws made by a local authority, whether under section twenty-three of the Public Health Acts Amendment Act, 1890, or under a local Act, with respect to the provision of means of access for the removal of house refuse shall cease to have effect, and so much of any local Act as authorises the making of such byelaws is hereby repealed.

COMPENSATION FOR DAMAGE DONE BY LOCAL AUTHORITY.

As to compensation for damage done by a local authority in the exercise of their powers relative to the collection of refuse or the cleansing of earthclosets, etc., see chapter 4, *ante*, p. 81.

PREVENTION OF NUISANCES FROM FILTH, ETC.

With a view to the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, a local authority may

make byelaws, in accordance with section 81 of the Act of 1936(a).

In this connection it should be remembered that in certain cases, action may be taken under Part III of the Act, section 92 (see *post*, p. 219), defining as statutory nuisances the following conditions:—

- (i) any premises in such a state as to be prejudicial to health or a nuisance;
- (ii) any animal kept in such a place or manner as to be prejudicial to health or a nuisance; and
- (iii) any accumulation or deposit which is prejudicial to health or a nuisance.

Byelaws made under section 81, *supra*, for the prevention of nuisances from snow, filth, dust, ashes and rubbish usually include, *inter alia*, the following provisions:—

- (a) A person shall not in removing any filth, dust, ashes, or rubbish, from any premises, deposit such filth, dust, ashes or rubbish, upon any footway or carriageway.
- (b) Where any cargo, load or collection of filth or rubbish emitting a stench, conveyed to any place within the district to await removal by the owner or consignee, is exposed without adequate means of preventing the emission of stench therefrom within one hundred yards—
 - (i) from any street or from any premises used wholly or partly for human habitation; or
 - (ii) from any school or place of public resort or worship; or
 - (iii) from any place in which any person is employed in any manufacture, trade or business,
 the owner or consignee or any person who may have undertaken delivery to the owner or consignee of the filth or rubbish shall not, without reasonable excuse, cause or suffer it to remain in such place for more than twenty-four hours after its deposit.

REMOVAL OF OFFENSIVE ACCUMULATIONS.

A sanitary inspector in a borough or urban district, or in a rural district or contributory place where section 49 of the Public Health Act, 1875(b), was in force immediately prior to the commencement of the Act of 1936, has power, under section 79, *infra*, to serve notice upon the owner of any manure or noxious matter or upon the occupier of the premises where it is found, requiring its removal within twenty-four hours. If the matter is not removed in accordance with the notice, the sanitary inspector may have it removed and the local authority may recover the expenses incurred from the owner or occupier in default.

Section 79, Public Health Act, 1936.—Power to require removal of noxious matter by occupier of premises in urban district.

- (1) If in a borough or urban district, or in a rural district or contributory place in which section forty-nine of the Public Health

Act, 1875, was in force immediately before the commencement of this Act, it appears to the sanitary inspector that any accumulation of noxious matter ought to be removed, he shall serve notice on the owner thereof, or on the occupier of the premises on which it is found, requiring him to remove it, and, if the notice is not complied with within twenty-four hours after service thereof, the inspector may remove the matter referred to.

- (2) A local authority may recover the expenses of any action reasonably taken by their inspector under the preceding subsection from the owner or occupier in default.

In accordance with section 276 of the Act of 1936, *infra*, a local authority may sell any materials removed by them under section 79, *supra*, paying to the owner thereof any balance remaining after deducting from the proceeds of the sale the expenses incurred by the authority in the collection of the manure or matter.

Section 276, Public Health Act, 1936.—Power of local authority to sell certain materials.

- (1) A local authority may sell any materials which have been removed by them from any premises, including any street, when executing works under, or otherwise carrying into effect the provisions of, this Act, and which are not before the expiration of three days from the date of their removal claimed by the owner and taken away by him.
- (2) Where a local authority sell any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expense recoverable by them from him.
- (3) This section does not apply to refuse removed by a local authority.

Any accumulation or deposit which is prejudicial to health or is a nuisance, may be dealt with as a statutory nuisance under section 92 (see *post*, p. 219)(*c*).

It was held under the old Nuisances Removal Act, 1855(*d*), that sea-weed which had drifted in from the sea and become a nuisance, must be removed by the Company owning the harbour where the nuisance occurred(*e*).

PERIODICAL REMOVAL OF MANURE.

Section 80 of the Act of 1936 (see *post*, p. 225) empowers certain local authorities to require the periodical removal of manure from stables and mews, as to which see chapter 9, *post*, p. 221 *et seq.*

(*c*) *Smith v. Waghorn* (1863), 27 J.P. 744 ; 36 Digest 179, 238.

(*d*) 18 and 19 Vict., c. 21, sect. 12.

(*e*) *Margate Pier and Harbour Proprietors v. Margate Town Council* (1869), 33 J.P. 437 ; 36 Digest 179, 240.

REMOVAL OF FAECAL, OFFENSIVE OR NOXIOUS MATTER.

A local authority are empowered by section 82 of the Act of 1936, *infra*, to make byelaws governing the removal through the streets of offensive matter or liquid.

Section 82, Public Health Act, 1936.—Byelaws as to removal through streets of offensive matter or liquid.

(1) A local authority may make byelaws—

- (a) prescribing the times for the removal, or carriage through the streets, of any faecal or offensive or noxious matter or liquid, whether that matter or liquid is in course of removal or carriage from within, or from without, or through, their district;
- (b) requiring that the receptacle or vehicle used for the removal or carriage of any such matter or liquid shall be properly constructed and covered so as to prevent the escape of any such matter or liquid;
- (c) requiring the cleansing of any place whereon any such matter or liquid has been dropped or spilt in the course of removal or carriage.

(2) If and so far as a byelaw made under the preceding subsection is inconsistent with a regulation made under section ten of the London Traffic Act, 1924, the regulation shall prevail.

In a case(*f*) affecting byelaws made under the repealed section 26(1) of the Public Health Acts Amendment Act, 1890(*g*), the expression “cleansing” was held to include, in certain circumstances, disinfection. This applies to the byelaws relating to the cleansing of any place whereon offensive matter or liquid has been dropped, made in accordance with paragraph (c), *supra*. The power to make byelaws under this section is supplemental to that contained in section 72(3) (see *ante*, p. 185).

Byelaws made under section 82, *supra*, usually provide for the carriage of offensive matter through the streets between specified hours, generally 6.30 a.m. to 8.30 a.m. in the months of March to October inclusive and between the hours of 7.0 a.m. and 9.0 a.m. during the months of November to February(*h*).

Section 10 of the London Traffic Act, 1924(*i*), empowers the Minister of Transport to make regulations to have effect in the London Traffic Area(*j*), generally for the regulation of traffic and, *inter alia*, for prescribing the conditions subject

(*f*) *Barnett v. Laskey* (1898), *ante*, p. 187.

(*g*) 13 Halsbury's Statutes 835.

(*h*) See Model Byelaws, Ministry of Health, Series IIA.

(*i*) 19 Halsbury's Statutes 183.

(*j*) The London Traffic Area is defined in the First Schedule to the London Traffic Act, 1924, and includes the whole of the administrative counties of London and Middlesex, and portions of the administrative counties of Buckinghamshire, Essex, Hertford, Kent and Surrey.

to which, and the times at which, vehicles, or vehicles of any particular class or description, may be used on streets for collecting refuse. The Minister has made an Order^(h) under this section.

REFUSE DISPOSAL.

PROVISION OF BUILDINGS, LANDS, ETC.

Section 76(1) (see *ante*, p. 181) of the Act of 1936, empowers a local authority to provide—

- (1) places for the deposit of refuse; and
- (2) plant or apparatus for treating or disposing of refuse.

This section removes doubts existing in section 45 of the Public Health Act, 1875 (*l*), and makes it clear that an authority can provide land for the deposit of refuse and refuse incinerators or other plant necessary for the disposal or treatment of refuse. In accordance with section 306 of the Act of 1936(*m*), which replaces section 159(2) of the Local Government Act, 1933 (*n*), repealed, a local authority may purchase land compulsorily by means of a provisional order made by the Minister of Health and confirmed by Parliament. As to compensation for war damage to buildings used by a refuse disposal undertaking, see section 40, War Damage Act, 1941(*o*).

METHODS OF DISPOSAL OF REFUSE.

A local authority may dispose of refuse in any way they think proper and section 76(2) of the Act of 1936(*p*), empowers an authority to sell refuse, removed by them from any premises, including any street, under the provisions of that Act. The usual methods of disposing of refuse are as follows :

- (1) Barging to sea;
- (2) Crude dumping;
- (3) Controlled tipping;
- (4) Pulverisation;
- (5) Salvage and incineration;
- (6) Incineration.

The method adopted for any particular locality will depend upon a variety of factors including—

- (1) Quantity of refuse;
- (2) Quality of refuse;
- (3) Type of locality;
- (4) Facilities available, *e.g.* proximity of sea; availability of suitable land; etc.
- (5) Markets for salvaged articles.

(*h*) London Traffic (Collection of Refuse) Regulations, 1927, S. R. and O., 1927, No. 101, applicable only to certain streets specified therein.

(*l*) 13 Halsbury's Statutes 645.

(*m*) 29 Halsbury's Statutes 517.

(*n*) 26 Halsbury's Statutes 392.

In making an ultimate choice, the ideal to be aimed at is the efficient disposal of the refuse at the lowest cost, and with this object in view every possible method should be carefully examined. The conditions existing vary considerably in different towns, so that the method to adopt in one area would not necessarily be a success in another.

With regard to the salvage of articles from refuse, many substances have been recovered and sold, including bottles and jars, paper, metals of all kinds, rags, bones, bagging and carpets, etc., but the markets fluctuate considerably and it is not always profitable to go to the time and trouble involved in recovering materials which may be difficult to dispose of at an economic cost. Much depends upon the size of the district; where it would be profitable in a large town to recover from refuse, for example, paper, bottles, tins, etc., sort, cleanse and pack them ready for disposal as scrap, it would be quite unprofitable in a smaller area, where the quantities were less and the facilities unsuitable.

So far as incineration is concerned (the term "incinerator" has now generally displaced the older term "destructor"), it must be remembered that if crude refuse is burned, approximately one-third of the total weight remains unconsumed as clinker, and has to be disposed of. While such clinker is admittedly innocuous, it is often a costly matter to find a suitable place of disposal and adding the cost of incineration, the total cost of disposal is greatly in excess of that for controlled tipping.

In deciding therefore upon the adoption of a method of refuse disposal, the primary object of rendering the refuse safe and innocuous, should not be allowed to outweigh all considerations of cost. The indiscriminate burning of crude refuse is generally unnecessary from a sanitary point of view and extremely wasteful. Except in special circumstances, the process cannot be recommended.

REFUSE TIPS.

Under section 76(1) of the Act of 1936 (see *ante*, p. 181), a local authority are empowered to provide places for the deposit of refuse. An authority are not entitled to tip rubbish on land in such a manner as to cause nuisance on adjoining land retained by the vendor of the land used as a tip, where the tipping can be carried out without nuisance(*q*). A local authority who undertook the cleansing of cesspools in their district, entered into a contract for the removal of the sewage

and the contractor used the sewage cart of the local authority, and deposited the contents upon the land of farmers in the neighbourhood as a result of an agreement made by the contractor. The local authority did not instruct the contractor where to deposit the cesspool contents but they were held liable in a case where action was taken for an injunction and damages in respect of a nuisance caused by the deposit of the filth upon land belonging to the plaintiff, such filth having been deposited upon plaintiff's land by the contractor without consent^(r). Where, however, land belonging to the plaintiffs was used as a tip by a third party without the knowledge or consent of the former, and access to the land was obtained by agreement with the defendant and over his premises, the plaintiffs were held not liable for a nuisance caused to the defendant by the tipping^(s). An injunction was granted in a case^(t) where the local authority discharged snow, street sweepings, and other refuse into a river at a point above the mills of the plaintiffs so as to cause injury to the plaintiffs by the pollution of the river. A perpetual injunction was granted restraining the local authority from tipping further refuse on a field so as to cause or occasion any nuisance to the plaintiff, the authority undertaking within fourteen days to cover with road sweepings or earth such portions of the heap of refuse as had not already been so covered^(u).

The practice of depositing refuse on to land so as to cause nuisance, by the process known as "crude tipping or dumping," has caused considerable concern during recent years, and has been particularly acute in the vicinity of Greater London. In June, 1922, the Minister of Health held a conference regarding the disposal of London refuse and subsequently suggested precautions to be taken in connection with refuse tips, which were appended to the annual report of the Ministry for the year 1931-32^(x). These precautions are as follows:—

REFUSE TIPS—SUGGESTED PRECAUTIONS.

- 1—Every person who forms a deposit of filth, dust, ashes or rubbish, of such a nature as is likely to give rise to nuisance, exceeding . . . (y) cubic yards must, in addition to the observance of any

(r) *Robinson v. Beaconsfield R.D.C.*, [1911] 2 Ch. 188; 38 Digest 237, 662.

(s) *Job Edwards Ltd. v. Birmingham Canal Navigation, Ltd.*, [1924] 1 K.B. 341; 36 Digest 214, 575.

(t) *Atkinson v. Huddersfield Corpn.* (1893), *Times*, April 20th, 1893.

(u) *Jones v. Welshpool Corpn.* (1904), *Times*, Nov. 18th, 1904.

(x) Cmd. 4113, p. 26 and Appendix I. H.M.S.O.

(y) Appropriate figures should be inserted here, after full consideration of the local conditions. The Ministry will be glad to advise on this point and.

other requirements which are applicable, comply with the following rules :

- (1) The deposit to be made in layers ;
 - (2) No layer to exceed(a) feet in depth ;
 - (3) Each layer to be covered, on all surfaces exposed to the air, with at least nine inches of earth or other suitable substance ; provided that during the formation of any layer not more than(a) square yards may be left uncovered at any one time ;
 - (4) No refuse to be left uncovered for more than 24 hours from the time of deposit(b) ;
 - (5) Sufficient screens or other suitable apparatus to be provided, where necessary, to prevent any paper or other debris from being blown by the wind away from the place of deposit.
- 2—Every person who deposits any filth, dust, ashes, or rubbish likely to cause a nuisance if deposited in any water must, so far as practicable, avoid its being deposited in water.
 - 3—Every person who deposits any filth, dust, ashes, or rubbish, must take all reasonable precautions to prevent the breaking out of fires and the breeding of flies and vermin on or in such deposit.
 - 4—If the material deposited at any one time consists entirely or mainly of fish, animal or other organic refuse, the person making such deposit must forthwith cover it with earth or other equally suitable substance at least two feet in depth.
 - 5—Every person who deposits any filth, dust, ashes, or rubbish must take all practicable steps to secure that tins or other vessels or loose debris likely to give rise to nuisance are not deposited in an exposed condition on or about the place of deposit.
 - 6—Sufficient and competent labour must be provided in connection with the deposit to enable the necessary measures to be taken for the prevention of nuisance.
 - 7—So far as practicable each layer of refuse which has been laid and covered with soil must be allowed to settle before the next layer is added.
 - 8—Wherever practicable the person making the deposit must avoid raising the surface of the tip above the general level of the adjoining ground.
 - 9—All refuse must be disposed of with such dispatch and be so protected during transit as to avoid risk of nuisance.

There are no general prohibitory powers preventing the deposit of refuse in any particular area but the byelaws relating to the prevention of nuisances which may be made under section 81(a) (see *ante*, p. 192), have been used in an attempt to control crude tipping, and the nuisance sections(c) may also be utilised.

Certain of the county councils around London have ob-

(a) Unless the circumstances are very exceptional, the depth of the layer should not exceed six feet.

(b) The object of this is to provide that even the surface which is allowed to remain exposed under the proviso to (3) shall be covered up after 24 hours.

tained powers in private Acts dealing with the dumping of refuse. The following section is a typical example(d) :—

Section 94, Surrey County Council Act, 1931.

- (1) It shall not be lawful for any authority, body or person to deposit or otherwise dispose of any refuse in any place within the county other than a place within the county district (if any) in which the refuse was collected or assembled without the consents first obtained in writing of the Council and of the local authority of the county district in which such deposit or disposal shall be intended to be made :

Provided that this subsection shall not apply

- (a) until the expiration of twelve months from the passing of this Act to any deposit of refuse in existence at the passing of this Act ; or
 - (b) to the deposit or disposal of sewage by any local or other public authority acting under the powers of any Act of Parliament or Order having the force of an Act ; or
 - (c) to the disposal of manure at or on a farm garden or nursery and intended to be used solely for horticultural, agricultural or farming purposes ; or
 - (d) to the deposit or disposal of refuse required solely for industrial purposes ; or
 - (e) to the tipping of spoil or refuse by a railway company for the purpose of constructing, widening or maintaining any railway works.
- (2) The Council and the local authority of the county district in which such deposit or disposal shall be intended to be made may grant or withhold their consent thereto or may make the granting of their consent subject to such terms and conditions as they think fit and may withdraw any such consent previously given :

Provided that if the Council and the local authority or either of them shall not notify the applicant for any such consent of their decision upon such application within twenty-eight days after the receipt thereof they shall be deemed respectively to have consented thereto unconditionally.

- (3) Any person offending against the provisions of subsection (1) of this section or infringing any of the terms or conditions subject to which a consent under that subsection shall have been granted shall be liable to a penalty not exceeding two hundred pounds and in the case of a continuing offence to a daily penalty not exceeding fifty pounds.
- (4) In this section " refuse " includes trade refuse, house refuse, filth, rubbish, dust and other like matter.

Somewhat similar provisions are included in the Essex County Council Act, 1933(e), but in a rather more extended form, power being given to deal with three types of dumps, namely :—

- (a) A person can dump refuse in accordance with conditions laid down in Part I of the Third Schedule(f), by simply giving 14

(d) Sect. 94, Surrey County Council Act, 1931 (21 and 22 Geo. 5, c. xxi).

(e) Sect. 146 (23 and 24 Geo. 5, c. xiv).

(f) Conditions being similar to those suggested by the Ministry of Health.

- days' notice in writing to the county council and the county district council ;
- (b) A person can dump refuse in accordance with conditions laid down in Part II of the Third Schedule, after obtaining the previous consent in writing of the county council and the county district council ;
 - (c) A person can dump refuse in accordance with conditions laid down in Part II of the Third Schedule in any area or areas prescribed from time to time by the county council. The conditions contained in Part II of the Third Schedule constitute a modified form of controlled tipping to suit large scale dumping.

Where refuse is tipped in accordance with the conditions prescribed by the Ministry of Health—known as controlled tipping—there should be no nuisance, either from fires, rats and vermin, smell, or light debris blowing about. The scientific aspects of controlled tipping have received very little attention and the exact nature of the changes which take place in the refuse after deposition, are only imperfectly understood. In a valuable contribution to this subject, however, Jones and Owen^(g) have shown that provided the process is properly carried out, refuse may be disposed of by controlled tipping without risk to the public health. At the same time, this method of disposal presents several distinct advantages as compared with other methods of refuse disposal. In the first place it is, as a general rule, cheaper. Secondly, useful and profitable schemes of land reclamation may be carried out, as a result of which derelict and waste ground, often waterlogged, may be turned into useful land to be employed for recreative purposes pleasure gardens and other similar uses. In short, controlled tipping is a valuable means of disposing of house and trade refuse. Provided the work is properly carried out, it is free from nuisance or danger to the public health, being at the same time economical, and, in some cases, profitable.

Nuisance may arise as a result of the transport of refuse from one district to another but the court refused to grant an injunction against a railway company for an alleged nuisance arising from smells proceeding from open trucks loaded with house refuse which were allowed to stand some hours at a junction, on the ground that there was no remissness on the part of the company in the forwarding of the trucks, and that they were acting reasonably in carrying the refuse to the junction and detaining it there^(h). On appeal, the case was settled upon an undertaking being given to put special

^(g) " Some Notes on the Scientific Aspects of Controlled Tipping," Jones, B.B. and Owen, F. Henry Blacklock & Co., Manchester.

^(h) *Att.-Gen. v. S.E. and C. Rail. Co.'s Management Committee* (1902), 24

coverings on the trucks and not to detain the trucks under ordinary circumstances for a period exceeding two and a half hours.

DEPOSITING REFUSE INTO STREAMS.

Every person who deposits the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, into any stream so as to interfere with its flow or cause pollution, is guilty of an offence in accordance with section 2 of the Rivers Pollution Prevention Act, 1876 (see *post*, p. 285).

Under section 20 of the Act of 1876⁽ⁱ⁾, the word "pollution" does not include innocuous discolouration, and "solid matter" does not include particles of matter in suspension in water. It was held in a case^(k) where a putrid effluent was discharged which consisted of 97.6% of water and only 2.4% of solids, that such effluent was not "putrid solid matter". See also the case of *Atkinson v. Huddersfield Corporation* (*ante*, p. 197).

ERECTION OF BUILDINGS ON "MADE" GROUND.

Section 54 of the Act of 1936, *infra*, requires a local authority to reject building plans in respect of any building or extension thereof, proposed to be made on land which has been filled up with any material impregnated with faecal or offensive animal or vegetable matter, unless the authority are satisfied that the material in question has been removed or has become or been rendered innocuous.

Section 54, Public Health Act, 1936.—Power to prohibit erection of buildings on ground filled up with offensive material.

- (1) Where plans for the erection or extension of a building are, in accordance with building byelaws, deposited with a local authority, and the site on which it is proposed to erect the building or the extension, as the case may be, is ground which has been filled up with any material impregnated with faecal or offensive animal or offensive vegetable matter, or is ground upon which any such material has been deposited, the authority shall reject the plans, unless they are satisfied that the material in question has been removed, or has become or been rendered innocuous.
- (2) Any question arising under this section between a local authority and the person by whom or on whose behalf plans are deposited as to whether the local authority ought to approve the erection

(i) 20 Halsbury's Statutes 323.

(k) *River Ribble Committee v. Halliwell*, [1899] 2 Q.B. 385; 44 Digest 41, 296; followed in *West Riding of Yorks. Rivers Board v. Rawsons* (1903), 67 T.D. 145.

of the building or of the extension, as the case may be, on the site in question may on the application of that person be determined by a court of summary jurisdiction.

STREET CLEANSING AND WATERING.

A local authority may, and when required by the Minister of Health must, undertake the cleansing of streets, in accordance with section 77 of the Act of 1936, *infra*, and they may undertake the watering of streets.

Section 77, Public Health Act, 1936.—Sweeping and watering of streets.

- (1) A local authority may, and if required by the Minister shall, undertake the cleansing, and may undertake the watering, of streets, as respects either the whole or any part of their district,
- (2) Where a local authority have under this section undertaken cleansing or watering of any streets with respect to which they are not the highway authority—
 - (a) the local authority may arrange with the highway authority for that authority to carry out the work on such terms as may be agreed ;
 - (b) if the local authority carry out the work, the highway authority shall make towards the expenses of the local authority such reasonable contribution, regard being had to the extent to which the work is or was necessary for the maintenance of the street and the safety of traffic thereon, as may be agreed or, in case of dispute, may be determined by the Minister.
- (3) A local authority who have under this section resolved to undertake the cleansing of streets shall not, if their resolution was passed in compliance with a requirement of the Minister, rescind it without his consent.

It will be observed that a local authority may be compelled to cleanse streets on the requirement of the Minister of Health, and in such a case, they cannot discontinue to do so without the consent of the Minister. The watering of streets, however, is left entirely to the discretion of the authority themselves. Any urban authority may by agreement with any person liable to repair any street or road, or part thereof, undertake themselves the maintenance, repair, cleansing or watering of any such street or road, or part thereof, on such terms as may be agreed upon between the parties concerned^(l).

Every road in a county which in pursuance of section 11 of the Local Government Act, 1888^(m), as amended by Part III. of the Local Government Act, 1929⁽ⁿ⁾, is a county road, must be maintained and repaired by the county council. Where the scavenging and watering of a county road was

(l) Sect. 148, Public Health Act, 1875 ; 13 Halsbury's Statutes 685.

(m) 10 Halsbury's Statutes 802.

(n) 10 Halsbury's Statutes 802.

necessary for keeping the road in repair as apart from reasons of public health and comfort, it was held to be the liability of the county council^(o). There has always been some doubt however as to whether the cleansing and watering of streets is a sanitary or a highway matter, and with a view to clarifying the position, subsection (2) has been introduced into section 77, *supra*, providing for the payment by the highway authority to the local authority of such contribution for the work as may be agreed upon between them.

Under section 249 of the Local Government Act, 1933^(p), any county council or borough council may make byelaws for the good rule and government of the county or borough, including the prevention and suppression of nuisances, and byelaws have been made prohibiting a person in charge of a dog in any street or public place, and having the dog on a lead, from allowing such dog to deposit its excrement upon the pavement. Under subsection (5) of section 249, *supra*, an urban or rural district council within the area of a county council who have adopted a byelaw under that section, may enforce such byelaw in their district.

SNOW REMOVAL.

A local authority, in pursuance of their powers under section 77 of the Act of 1936, *supra*, are entitled to cleanse streets from snow and under section 81 (see *ante*, p. 192) they may make byelaws for the prevention of nuisances arising from, *inter alia*, snow. Although byelaws may be made imposing the duty of cleansing footpaths upon the occupiers of premises abutting thereon, nowadays it is the general practice for most urban authorities at least, to carry out the work themselves. The methods adopted for dealing with a fall of snow vary in different towns and also according to the volume of snow to be removed and the type of street.

Snow may be removed and tipped on to vacant land, into sewers, or into rivers. It may be swept to the sides of the roads, remaining in piles to melt, care being taken to keep open the channels for the free flow of water. Salt is commonly employed to assist the rapid melting of snow. Cook^(q) states that one ton of soiled white salt is sufficient to treat effectively 15,000 square yards of road surface covered with snow 3 inches deep.

(o) *R. v. Essex J.J.* (1888), 54 J.P. 279. *Re Warminster L.B. and Wilts C.C.* (1890), 25 Q.B.D. 450; 26 Digest 395, 1217.

(p) 26 Halsbury's Statutes 439.

(q) Public Cleansing, The "Jas. Jackson" Study Circle (see *ante*, p. 180), p. 240.

CLEANSING OF COMMON COURTS AND PASSAGES.

The scavenging of common courts and passages is dealt with in section 78 of the Act of 1936, *infra*, which enables a local authority to sweep and cleanse such courts and passages and, if they think fit, to recover from the occupiers concerned, the expenses incurred.

Section 78, Public Health Act, 1936.—Scavenging of common courts and passages.

- (1) If any court, yard or passage which is used in common by the occupants of two or more buildings, but is not a highway repairable by the inhabitants at large, is not regularly swept and kept clean and free from rubbish or other accumulation to the satisfaction of the local authority, the authority may cause it to be swept and cleansed.
- (2) The local authority may recover any expenses reasonably incurred by them under this section from the occupiers of the buildings which front or abut on the court or yard, or to which the passage affords access, in such proportions as may be determined by the authority, or, in case of dispute, by a court of summary jurisdiction.

SOIL, OR REFUSE FALLING UPON AND BEING
WASHED INTO STREETS.

Where Part II. of the Public Health Act, 1925(*r*), is in force in a district(s), any urban authority may give notice to the owner or occupier of any land abutting upon any street within their district which is repairable by the inhabitants at large, requiring him, in accordance with section 22 of that Act, *infra*, within a period of twenty-eight days from the service of the notice, to so fence off, channel or embank the lands, as to prevent soil or refuse from falling upon or being washed or carried into the street in such quantities as to obstruct the highway or choke up a sewer or gully. It should be noted that this section cannot be adopted by a rural district council but it is operative in all such districts by virtue of section 30(2) and Sched. 1, Part 1 of the Local Government Act, 1929(*t*), being enforced by county councils. Any rural district already invested with the powers contained in section 22, *infra*, ceased to exercise such powers after the passing of the Local Government Act, 1929.

Section 22, Public Health Act, 1925.—For preventing soil, etc., from being washed into streets.

- (1) The urban authority may give notice to the owner or occupier of any lands abutting upon any street within their district

(*r*) 13 Halsbury's Statutes 1119.

(*s*) As to adoption of this Part of the Act, see sects. 3-5; 13 Halsbury's Statutes 1116.

(*t*) 10 Halsbury's Statutes 904 975

which is repairable by the inhabitants at large, requiring him, within twenty-eight days after the service of the notice, so to fence off, channel or embank the lands as to prevent soil or refuse from such lands from falling upon, or being washed or carried into the street, or into any sewer or gully therein, in such quantities as will obstruct the highway or choke up such sewer or gully.

- (2) Any person to whom a notice under this section is addressed who shall fail, within twenty-eight days after the service of the notice, to execute the works therein specified shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

PREVENTION OF WATER FLOWING ON FOOTPATHS.

Where Part II of the Public Health Act, 1925, *supra*, is in force in a district, section 21, *infra*, enables an urban authority to require by notice the owner of any premises abutting on a street, within twenty-eight days from the date of service of the notice, to provide such down-pipes, channels or gutters as may be necessary to prevent, so far as is reasonably practicable, surface water flowing over the pavement.

Section 21, Public Health Act, 1925.—Prevention of water flowing on footpath.

- (1) The owner of any premises abutting on a street within an urban district shall, within twenty-eight days after the service of a notice in writing by the urban authority requiring him so to do, execute and thereafter maintain such down-pipes, channels or gutters as may be necessary to prevent, so far as is reasonably practicable, surface water from the premises flowing on to, or over, the footpath of the street, and if he fails to do so he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.
- (2) The provisions of this section shall be in addition to and not in derogation of the provisions of section seventy-four of the Towns Improvement Clauses Act, 1847.

Section 74 of the Towns Improvement Clauses Act, 1847(*u*), requires the provision, by the owner or occupier, within seven days after the service of notice, of a shoot or trough the whole length of a house or building connected to a pipe from the roof to the ground to carry off water from the roof in such a manner that the water will not fall upon persons passing along the street or flow over the footpath. Section 21, *supra*, also cannot now be adopted by a rural district council but is in force in such areas, being enforced by the county council.

The word "abutting" used in sections 21 and 22 of the Public Health Act, 1925, *supra*, has been held to mean in actual

contact with(a) but it appears that the facts of each individual case determine the exact practical meaning of "in actual contact."(b)

COSTING OF THE PUBLIC CLEANSING SERVICE.

The cost of the public cleansing service is considerable. In 1925 it was estimated that nearly £8,000,000 was spent annually on the collection and disposal of house and trade refuse, and a further £4,000,000 on street cleansing and watering. In order that the expenditure on these services should be adequately controlled by local authorities, it is essential that a proper system of costing should be adopted. In March, 1925, a Report(c) was issued by the Ministry of Health on the findings of a Conference of Financial and Cleansing Officers on the methods of keeping costing accounts.

WEIGHT OF REFUSE DEALT WITH.

The first essential in the preparation of proper cost accounts is an accurate estimate of the quantity of refuse dealt with in a given period. Unit costs are usually expressed as the net cost per ton of refuse collected, and also the net cost per 1,000 houses or premises from which refuse is removed. It is obvious that the unit cost per ton will be less if the weight of refuse has been over-estimated. Wherever possible therefore it is essential that *all* the refuse should be passed over a weighbridge in order to obtain the exact amount dealt with. In districts where for a variety of reasons (*e.g.* cost, difficulties of transport to weigh-bridge, etc.) it is impracticable to weigh all the refuse, an accurate estimate should be made. This is best obtained by making a series of test weighings at regular intervals, usually once in three months. By this means, it is possible to obtain a fairly accurate estimate of the average quantity of refuse produced in a given period and to base the costs accordingly. The following table shows the actual weights obtained with a number of vehicles, each load collected during one week being weighed and the figures given represent the average weight for the week.

(a) *Barnett v. Covell* (1903), 68 J.P. 93; 26 Digest 567, 2601.

(b) See *Rockleys, Ltd. v. Pritchard* (1910), 74 J.P. 11; 26 Digest 567, 2602; *Stockport Corp'n. v. Rollinson* (1910), 74 J.P. 236; 26 Digest 567, 2603.

(c) *The Collection and Disposal of Refuse and Street Cleansing by Local Authorities in England and Wales.* Report of a Conference appointed by the Ministry of Health to consider methods of keeping costing accounts. March 1925. H.M.S.O. London.

TABLE XII

Average Weight of refuse collected by different vehicles.

Vehicle	Nov. 1929	Feb. 1930	May 1930	Aug. 1930	Nov. 1930	Feb. 1931
	T.C.Q.	T.C.Q.	T.C.Q.	T.C.Q.	T.C.Q.	T.C.Q.
No. 1	1.13.3	1.14.0½	1.14.0	1.12.3	1.15.1	1.13.0
No. 2	1. 8.1	1.12.1	1. 9.3	1. 8.0	1.11.2	1.12.0
No. 3	1. 1.3	1. 2.2	1. 0.2	1. 3.0	1. 3.0	1. 2.3
No. 4	8.1	8.2	9.0	9.2	10.3	11.3

Nos. 1 to 3—house refuse ; No. 4—trade refuse.

It will be clear from the above figures, that there is a wide seasonal variation in the weight of house and trade refuse, and in the absence of facilities for the weighing of all refuse, test weighings on the lines indicated above should always be carried out.

Not only does the weight of refuse vary within wide limits in the same district according to the time of the year but it also varies in different types of district. The following figures extracted from the returns issued by the Ministry of Health(*d*) show the average weight of refuse per 1,000 population per day, together with the average cost per ton for collection and disposal for the year 1933-34.

TABLE XIII

Weight of refuse and cost of cleansing service in different types of district.

Class of authority.	Average weight per 1,000 of population per day.	Average cost per ton.	
		Collection.	Disposal.
	cwts.	s. d.	s. d.
County boroughs	16.2	8 9	3 11
Metropolitan boroughs	15.8	12 2	8 4
Other boroughs	15.9	8 3	4 2
Urban districts	19.2	8 3	2 7
For all places making returns	17.0	8 8	4 0

The following statement, also extracted from the returns of the Ministry of Health for 1933-34, shows the weight per 1,000 of population per day, together with the method of obtaining the weight of refuse.

TABLE XIV

Average weight of refuse collected and method of obtaining weight.

Averages for the year.	County Boroughs.		Metropolitan Boroughs.		Other Boroughs.		Urban Districts.		Total.	
	Actual weight.	Others.	Actual weight.	Others.	Actual weight.	Others.	Actual weight.	Others.	Actual weight.	Others.
1933-34	cwts. 13.5	cwts. 17.7	cwts. 15.1	cwts. 24.5	cwts. 13.5	cwts. 17.3	cwts. 12.4	cwts. 20.6	cwts. 13.7	cwts. 18.8
1934-33	13.8	18.1	15.3	20.6	13.8	17.1	12.3	20.6	13.9	18.9

"Actual weight" comprises towns in which 80% or more of the refuse was actually weighed.

It will be observed that in the towns where the whole of the refuse was weighed, the quantity is generally less than in those towns where an estimate is relied upon. In other words, there is a general tendency to over-estimate the weight of refuse, which results in the unit costs being less than they ought to be.

The weight of refuse varies considerably in different types of district, as will be seen from the following Table, extracted from the returns of the Ministry of Health previously referred to.

TABLE XV

Average weight of refuse collected in various types of districts.

Average weight of refuse per 1,000 of population.				
Class of town.	Group A (all refuse weighed).	Group T (all refuse not weighed, test weighings taken).	Group E (all refuse not weighed, weight only estimated).	Total.
All towns ..	cwts 13.7	cwts 18.4	cwts 19.4	cwts 17.0
All towns except mining and seaside towns ..	13.2	16.2	16.6	15.1
Mining towns ..	17.2	25.1	26.6	25.0
Seaside towns ..	15.8	18.7	16.7	17.1

Tables XIV and XV show not only the variations in weight of refuse produced in different classes of district, but emphasize still further the importance of all the refuse being weighed.

COSTING TABLES.

The following Tables, from the Report of the Ministry of Health previously referred to (see *ante*, p. 206), indicate the various costing records necessary, arranged under appro-

appropriate headings to show the cost of the services as a whole and subdivided for refuse collection and disposal, and street cleansing.

Table XVI shows the Main and Sub-Accounts, together with the analysis of expenditure of each of the sub-accounts.

TABLE XVI

Proposed headings and sub-headings under which expenditure should be recorded.

Main Accounts. (1)	Sub-Accounts. (2)	Analysis of expenditure on each of the Sub-Accounts in Column (2). (3)
I. Refuse Col- lection.	1. Dry Refuse. 2. Nightsoil. 3. Pails. 4. Cesspools or Dumb- wells. 5. Miscellaneous.	(1) Wages of Refuse Collectors. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Workmen's Clothing. (7) Hired Haulage. (8) Team Labour. <i>See</i> Transport Account IV (a). (9) Mechanical Transport—Electric* (10) Mechanical Transport—Petrol* (11) Mechanical Transport—Steam* (12) Tools and Implements. (13) Miscellaneous. (14) Proportion of General Charges.
II. Refuse Dis- posal	1. Refuse disposal works. 2. Clinker Disposal. 3. By-product Plants 4. Refuse Disposal (by rail or canal or by hopper to sea). 5. Tipping. 6. Miscellaneous.	(1) Wages of Workmen. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Workmen's Clothing. (7) Rents, Rates, Taxes & Insurance. (8) Gas, Water and Electricity. (9) Haulage and Transport Charges. (10) Building Repairs and Main- tenance. (11) Plant Repairs, Maintenance and Renewals. (12) Tools and Implements. (13) Miscellaneous. (14) Proportion of General Charges.
III. Street Cleansing	1. Street Sweeping and Watering. 2. Gully Cleansing. 3. Snow Removal.	(1) Wages of Workmen. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Workmen's Clothing. (7) Rent, Rates, Taxes & Insurance. (8) Gas, Water and Electricity. (9) Haulage and Transport Charges. (10) Plant Repairs, Maintenance and Renewals. (11) Tools and Implements. (12) Miscellaneous. (13) Proportion of General Charges.

* *See* Transport Account IV (b).

TABLE XVI—*continued.*

Main Accounts. (1)	Sub-Accounts. (2)	Analysis of expenditure on each of the Sub-Accounts in Column (2). (3)
IV. Transport— (a) Horses, Carts and Stables.		(1) Wages of Horsekeepers, Stable Assistants and Carters. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Workmen's Clothing. (7) Rents, Rates, Taxes & Insurance (8) Fuel, Lighting and Water (9) Building Repairs & Maintenance. (10) Carts and Wagons Repairs and Maintenance (11) Saddlery. (12) Provender and Bedding. (13) Farriery and Veterinary Fees. (14) Miscellaneous. (15) Proportion of General Charges.
(b) Motor Transport.	1. Electric Vehicles. 2. Petrol Vehicles. 3. Steam Wagons.	(1) Wages. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Workmen's Clothing. (7) Rents, Rates, Taxes, Licences and Insurance. (8) Fuel and Power Expenses (including Oil and Water). (9) Garage Repairs & Maintenance. (10) Repairs & Maintenance of Vehicles (a) Mechanical & Electrical, (b) Bodies & Tyres. (11) Miscellaneous. (12) Proportion of General Charges.
V. Workshop Expenses.		(1) Wages. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U. (5) Workmen's Compensation. (6) Rents, Rates, Taxes & Insurance. (7) Fuel, Lighting, Power Expenses and Water. (8) Building Repairs and Maintenance. (9) Plant and Machinery Repairs and Maintenance. (10) Tools and Implements. (11) Printing, Stationery, Telephones and Miscellaneous. (12) Proportion of General Charges.
VI. General Administra- tive Ex- penses.		(1) Salaries and Wages. (2) Holiday and Sick Pay. (3) Superannuation. (4) National Insurance—H. and U.

TABLE XVI—*continued.*

Main Accounts. (1)	Sub-Accounts. (2)	Analysis of expenditure on each of the Sub-Accounts in Column (2). (3)
VI. General Administra- tive Expen- ses— <i>contin- ued.</i>		(5) Workmen's Compensation. (6) Rents, Rates, Taxes & Insurance (7) Fuel, Lighting and Water. (8) Building Repairs & Maintenance. (9) Office Furniture & Equipment. (10) Printing, Stationery & Adver- tising. (11) Telephones, Telegrams & Postage (12) Miscellaneous.

In order that the expenditure recorded in the various accounts may be summarised and the total and unit costs compared, the following statistical tables, relating to house and trade refuse (Table XVII) and street cleansing (Table XVIII) respectively, should be prepared.

TABLE XVII

House and Trade Refuse.

Table showing Costs for the Year ended.....19.....

Item.	Particulars.	I.—Collection.		II.—Disposal.		Total.	
		Includ- ing Depre- ciation or Loan Charges.	Exclud- ing Loan Charges.	Includ- ing Depre- ciation or Loan Charges.	Exclud- ing Loan Charges.	Includ- ing Depre- ciation or Loan Charges.	Exclud- ing Loan Charges.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	<i>Revenue Account.</i>	(See Note a.)		(See Note a.)		(See Note a.)	
A.	Gross expenditure						
B.	Gross income						
C.	Net Cost						
	<i>Unit Costs.</i>						
D.	Gross expenditure, per ton ..						
E.	Gross income, per ton ..						
F.	Net cost, per ton						
G.	Net cost, per 1,000 population						
H.	Net cost, per 1,000 houses or premises from which refuse is collected						
	<i>Rate Pounding.</i>						
J.	Net cost; equivalent rate in the £						
K.	Percentage of J. to total rates in the £						

1. Total refuse collected (in tons).....
2. Population: Midsummer, 19 (See Note b).....
3. Weight per 1,000 population per day (in cwts.)
4. Number of houses and premises. (See Note c).....
5. Rateable value £
6. Product of a penny rate £
7. Total rates in the £ £

NOTES.

- (a) "Loan charges" should include interest on loans; repayment of loans; revenue contributions to capital outlay and rents.
- (b) The Midsummer population as given by the Registrar General should be stated.
- (c) The number of houses should be those separately occupied according to the latest census return, *plus* the number built since, *less* the number, if any, demolished.

PLANT.

Amounts (if any) included in Item A. in respect of *new* plant (as distinct from repairs or renewals):—

Column (3): £.....	Column (4): £.....
" (5): £.....	" (6): £.....
" (7): £.....	" (8): £.....

TABLE XVIII

Street Cleansing.

Item.	Particulars.	III.—Street Cleansing.					
		Street Sweeping and Watering.		Gully Cleansing.		Snow Removal.	
		Including Depreciation or Loan Charges.	Excluding Loan Charges.	Including Depreciation or Loan Charges.	Excluding Loan Charges.	Including Depreciation or Loan Charges.	Excluding Loan Charges.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
A.	<i>Revenue Account.</i>						
B.	Gross expenditure						
	Gross income						
C.	Net cost						
D.	<i>Unit Costs.</i>						
	Net cost, per 10,000 square yards cleansed			—	—	—	—
E.	Net cost, per 1,000 gullies cleansed	—	—			—	—
F.	<i>Rate Poundage.</i>						
	Net cost: equivalent rate in the £						

1.	Square yards of streets cleansed (exclusive of footpaths)	..	..	..	..	..	..
2.	Total number of gullies cleansed (<i>see</i> note)	..	..	..	..	..	..
3.	Rateable value .. ..	..	..	..	..	..	£
4.	Product of a penny rate .. ..	..	..	..	..	..	£
5.	Total rates in the £ .. ..	..	..	..	..	..	£ s. d.
6.	Total mileage of roads .. ..	..	..	..	..	..	..
7.	Approximate mileage cleansed daily .. ..	..	..	..	..	..	..
8.	" " " " three times weekly .. ..	..	..	..	..	..	..
9.	" " " " twice weekly .. ..	..	..	..	..	..	..
10.	" " " " once weekly .. ..	..	..	..	..	..	..
11.	" " " " less than once weekly .. ..	..	..	..	..	..	..
12.	Average length of haul to tip or place of disposal .. ..	..	..	..	..	..	..

NOTE.

Number of gullies cleansed means number of gullies multiplied by times of emptying.

PLANT.

Amounts (if any) included in Item A in respect of *new* plant (as distinct from repairs or renewals):—

Column (3): £.....	Column (4): £.....
" (5): £.....	" (6): £.....
" (7): £.....	" (8): £.....

Many local authorities require a monthly statement showing the expenditure incurred to date in relation to the estimate for the year as a whole. Table XIX is recommended for this

TABLE XIX

Cleansing Service.

Monthly Statement of Cost.

Month ended

19 .

	Current figures.	Figures for correspond- ing period of previous year.
House and Trade Refuse.		
<i>Collection.</i>		
Gross expenditure for month		
" " per ton for month*		
Actual net cost to end of month		
Estimated net cost for the year		
Collected during month (in tons)		
" per 1,000 of the population per day† (in cwts.)		
<i>Disposal.</i>		
Gross expenditure for month		
" " per ton for month*		
Total income for month		
Actual net cost to end of month		
Estimated net cost for the year		
Street Cleansing.		
<i>Street Sweeping and Watering.</i>		
Gross expenditure for month		
" " per 10,000 sq. yds. for mth.*		
Actual net cost to end of month		
Estimated net cost for the year		
No. of sq. yds. of streets cleansed (in 1,000's)		
<i>Gulley Cleansing.</i>		
Gross expenditure for month		
" " per 1,000 gullies for month*		
Actual net cost to end of month		
Estimated net cost for the year		
No. of gullies cleansed		

* Unit costs should be given to nearest penny.

By the adoption of a proper system of costing, as indicated in the preceding pages, and elaborated in more detail in the Report of the Ministry of Health from which the above Tables have been extracted, it is possible to compare the cost of the public cleansing service over a given period, and any abnormal increased expenditure is quickly apparent and can be investigated without delay.

PART III.

NUISANCES.

CHAPTER 9.—NUISANCES.

Nuisances may either be common law or statutory nuisances. In the former case, the nuisance is one which violates the principles which are laid down by the common law for the protection of the public, apart from any express provision of the statutes relating to nuisances. A statutory nuisance, on the other hand, is one which, whether or not it constitutes a common law nuisance, is defined as a nuisance by statute, either in express terms or by implication. The chief statutory nuisances are defined in the Act of 1936 and are considered in this chapter.

A nuisance may also be public, general or common, or private. A public nuisance is one which inflicts damage, injury or inconvenience upon all the King's subjects, or upon all who come within the sphere of its operation, though it may affect some to a greater extent than others(*a*). A private nuisance is one which affects only private individuals who are immediately within the sphere of its operation. Apart from their powers enabling them to deal with statutory nuisances, a local authority has a common law right to abate public nuisances which interfere with the use by the public of property vested in the authority(*b*).

The detection and abatement of nuisances is an important part of the work of sanitary inspectors. In spite of the many improvements carried out and action taken by local authorities since nuisances were first dealt with under the earlier Public Health Acts, routine inspections are still necessary and complaints are still received, regarding a large variety of conditions which may or may not constitute nuisances within the meaning of the Act of 1936, and call for attention by local authorities.

(*a*) See *Soltau v. De Held* (1851), 2 Sim. (N.S.) 133; 36 Digest 164, 66.

(*b*) See *R. v. Richmond, Surrey, J.J.* (1860), 24 J.P. 422; 26 Digest 457, 1736; *Bagshaw v. Buxton Local Board of Health* (1875), 1 Ch. D. 220; 26 Digest 440, 1652.

DUTY OF LOCAL AUTHORITY REGARDING DETECTION OF NUISANCES.

Section 91 of the Act of 1936, *infra*, imposes upon every local authority the duty of causing their district to be inspected from time to time with a view to the detection of nuisances.

Section 91, Public Health Act, 1936.—Duty of local authority to inspect district for detection of nuisances.

It shall be the duty of every local authority to cause their district to be inspected from time to time for the detection of matters requiring to be dealt with under the provisions of this Part of this Act as being statutory nuisances within the meaning of the next succeeding section.

Local authorities are also required to cause an inspection of their district to be carried out in accordance with the provisions of the Housing Act, 1936(c), in order to ascertain those houses which are unfit for human habitation(d).

Power of entry, for the purpose of the detection and abatement of nuisances, is contained in section 287 of the Act of 1936 (see *ante*, p. 52).

COMPLAINTS AS TO NUISANCES.

The power of complaint contained in section 93 of the Public Health Act, 1875(e), has not been reproduced in the Act of 1936, but any person aggrieved by a nuisance may make a complaint to a justice of the peace in accordance with section 99, *infra*, and thereafter the same proceedings may be taken as in the case of a complaint by a local authority.

Section 99, Public Health Act, 1936.—Power of individual to make complaint as to statutory nuisance.

Complaint of the existence of a statutory nuisance under this Act may be made to a justice of the peace by any person aggrieved by the nuisance, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of a complaint by the local authority, but any order made in such proceedings may, if the court after giving the local authority an opportunity of being heard thinks fit, direct the authority to abate the nuisance.

Although a person aggrieved may take proceedings under section 99, *supra*, a statutory duty to keep the premises in a

(c) Sect. 5; 29 Halsbury's Statutes 325.

(d) See the author's "Housing Administration," Part II., chapter 4, for full details of housing inspections.

(e) 13 Halsbury's Statutes 663.

sanitary condition or so as not to be a nuisance, is not placed upon the owner so as to enable the tenant to counterclaim damages for breach of such duty when proceeded against for rent(f). Under section 2 of the Housing Act, 1936, however, there is an implied condition, that upon the letting of a house to which that section applies, such house is in all respects reasonably fit for human habitation and will be maintained in that condition throughout the tenancy(g). In a case where smoke from a factory was alleged to cause nuisance to the occupier of a cottage six miles away, the High Court declined to confirm an order of the justices requiring the abatement of the nuisance, on the grounds that no nuisance was caused on the dates mentioned in the summons and that the section did not lay down that once a person was aggrieved they were always aggrieved(h). It was held in a further case(i), that the service of a notice is not necessary before a private individual takes action before a magistrate.

Complaints regarding nuisances may be made by owners or occupiers of dwelling-houses, residents in the vicinity of the premises complained of, members of local authorities, social workers, officers of local authorities, and other interested parties; in some instances they may be anonymous. In every case the complaint should be fully investigated and appropriate action taken by the local authority or their officers. Many complaints are received verbally at the sanitary inspector's office, and in such cases it is desirable to have the complaint put into writing.

In some cases it may be desirable for an inspector to be accompanied by a witness when making an inspection for the detection of a nuisance. Certain forms of nuisances may require repeated visits and inspections, carried out at different times during the day and possibly at night, in order to ascertain whether a nuisance actually exists and, if so, to what extent. In connection with the detection and abatement of nuisances, it must not be forgotten that discord, as between landlord and tenant, or between neighbours, not infrequently leads to the making of a complaint to the sanitary inspector and in many of these cases the nature of the complaint is either exaggerated or not justified at all. Action should not be taken, either by the local authority or any of their officers, with regard to an alleged nuisance, until the authority or officer is satisfied that the nuisance exists and

(f) *Hildige v. O'Farrell* (1880), 6 L.R.Ir. 493.

(g) See the author's "Housing Administration," 2nd Edition, p. 199.

(h) *Hilton v. Hopwood* (1899), 44 Sol. Jo. 90.

(i) *Cocker v. Cardwell* (1869). L.R. 5 O.B. 15: 36 Digest 232, 720.

is one which can be dealt with under the Public Health Act. The mere fact of a complaint being made is not sufficient to justify action being taken.

DEFINITION OF NUISANCES.

Nuisances which may be dealt with under Part III of the Act of 1936 are defined as "statutory nuisances" and are enumerated in section 92, *infra*.

Section 92, Public Health Act, 1936.—Statutory nuisance.

- (1) Without prejudice to the exercise by a local authority of any other powers vested in them by or under this Act, the following matters may, subject to the provisions of this Part of this Act, be dealt with summarily, and are in this Part of this Act referred to as "statutory nuisances," that is to say :—
 - (a) any premises in such a state as to be prejudicial to health or a nuisance ;
 - (b) any animal kept in such a place or manner as to be prejudicial to health or a nuisance ;
 - (c) any accumulation or deposit which is prejudicial to health or a nuisance ;
 - (d) any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood ;
 - (e) any workplace, which is not provided with sufficient means of ventilation, or in which sufficient ventilation is not maintained, or which is not kept clean or not kept free from noxious effluvia, or which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein ;
 - (f) any other matter declared by any provision of this Act to be a statutory nuisance.
- (2) A local authority shall not without the consent of the Minister institute summary proceedings under this Part of this Act in respect of any such nuisance as is mentioned in paragraph (c) or paragraph (d) of the preceding subsection if proceedings in respect thereof might be instituted under the Alkali, etc., Works Regulation Act, 1906.
- (3) So much of paragraph (e) of subsection (1) of this section as relates to the provision of means of ventilation and the maintenance of ventilation shall not apply to a shop to which the Shops Act, 1934, applies.

It will be seen that as compared to section 91 of the Public Health Act, 1875(*k*), section 92, *supra*, does not include any reference to offensive privies, urinals, cesspools, drains and ash-pits, as those matters are dealt with in section 39 (see *ante*, p. 128) relating to the drainage of existing buildings, and sections 44 and 45 (see *ante*, pp. 141 and 143), relating to

buildings with insufficient or defective closet accommodation. The provisions of section 91 of the Act of 1875, *supra*, relating to smoke nuisances have been transferred to section 101 of the Act of 1936 (see *post*, p. 268) and those relating to nuisances arising from overcrowding have been omitted as unnecessary, owing to the powers contained in Part IV of the Housing Act, 1936(*l*).

It should be observed that nuisances under the Act of 1936 are of two types, those which constitute a nuisance, and those which are prejudicial to health. The word "nuisance" implies a public nuisance, whereas conditions "prejudicial to health" constitute a statutory nuisance whether the public are affected or not. The desire of the legislature, as originally defined in the Nuisances Removal Act, 1855, was stated by COCKBURN, C.J., as intending "to secure the means of abating things that were either matters of public or private nuisance, of public nuisance as coming within the word 'nuisance,' and private as coming within the words 'prejudicial to health' "(*n*).

Any doubt as to whether private nuisances are within section 92, *supra*, has now been settled(*o*).

The various statutory nuisances will now be considered in detail.

(a) **Any premises in such a state as to be prejudicial to health or a nuisance.**—The following expressions are defined in section 343 of the Act of 1936—

"premises" includes messuages, buildings, lands, easements and hereditaments of any tenure;

"prejudicial to health" means injurious, or likely to cause injury, to health.

The expression "premises" has been held not to include a sewage works constructed by a local authority and a court has no power to make an order requiring the abatement of a nuisance thereon(*p*). Similarly, under the Public Health (London) Act, 1891(*q*), public sewers vested in the London County Council cannot be dealt with as a nuisance under that Act(*r*). A house which is in such a dangerous condition as to be likely to fall down may be a nuisance at common

(*l*) 29 Halsbury's Statutes 609.

(*n*) In *Great Western Rail. Co. v. Bishop* (1872), L.R. 7 Q.B. 550; 36 Digest 177, 225.

(*o*) *Betts v. Penge U.D.C.*, [1942] 2 K.B. 154; Digest Supp.

(*p*) *R. v. Parlbv* (1889), 22 Q.B.D. 520; 36 Digest 178, 234.

(*q*) 11 Halsbury's Statutes 1025.

(*r*) *Fulham Vestry v. London County Council*, [1897] 2 O.R. 76; 36 Digest

law(s), and if a house is not kept in repair and actual injury results, the person responsible may be liable (t). An interesting case occurred in Ireland, where a nuisance was alleged as the result of the tenant of one flat in a house having to pass through the living room of the lower flat in order to reach the only watercloset for the two flats, it being held as a question of fact that no nuisance existed(u). Where vacant land became a nuisance, the owner is liable at common law, even though the nuisance is caused by the act of others(v). Where sections 30 and 31 of the Public Health Acts Amendment Act, 1907(w), are in force in a district(x), a local authority may take action with regard to the fencing of dangerous places and of land adjoining streets. In a case where land became flooded due to the breach of the river bank, the owner of the land was held to be liable for a nuisance where it arose by his act, default or sufference, in spite of the fact that he was under no obligation by contract or otherwise to maintain or repair the bank in question(y). It was held that proceedings cannot be taken under the nuisance provisions in respect of an alleged nuisance arising from the fall of rocks, owing to the action of weather, causing damage to adjoining property (z). Water dripping from a railway bridge on to the roadway beneath is not a nuisance(a). Where an accumulation of cinders, ashes and refuse gave off strong fumes, it was held to be a nuisance even though it was not injurious to health(b). This case emphasises the fact that the premises need only be in a state prejudicial to health OR a nuisance.

In a case(c) where, the tenant having failed to pay the rent of a flat, the owner removed the window sashes and door, it was held that an offence had been committed within the meaning of section 92(1)(a) of the Act of 1936.

(b) Any animal kept in such a place or manner as to be prejudicial to health or a nuisance.—In connection with the keeping of animals, it should be remembered that section

(s) *R. v. Watts* (1703), 1 Salk. 357 ; 26 Digest 433, 1517.

(t) See cases detailed in notes to section 92, Public Health Act, 1936, Lumley's Public Health, 11th Edition.

(u) *Belfast Corpn. v. Thompson* (1908), 42 Ir.L.T. 215.

(v) *Att.-Gen. v. Tod Heatley*, [1897] 1 Ch. 560 ; 36 Digest 177, 221.

(w) 13 Halsbury's Statutes 922.

(x) As to adoption of Act, see sect. 3 ; 13 Halsbury's Statutes 911.

(y) *Clayton v. Sale U.D.C.*, [1926] 1 K.B. 415 ; 36 Digest 229, 702.

(z) *Pontardawe R.D.C. v. Moore-Gwyn*, [1929] 1 Ch. 656 ; Digest Supp.

(a) *G. W. Rail. Co. v. Bishop* (1872), L.R. 7 Q.B. 550 ; 36 Digest 177, 225.

(b) *Bishop Auckland L.B. v. Bishop Auckland Iron Co.* (1882), 10 Q.B.D. 138 ; 36 Digest 178, 228.

(c) *Betts v. Fenge U.D.C.*, [1942] 2 K.B. 154 ; Digest Supp.

81 of the Act of 1936 (see *ante*, p. 192) enables a local authority to make byelaws for the prevention of the keeping of animals so as to be prejudicial to health.

Under the Municipal Corporations Act, 1835, section 90, it was held that a byelaw which prohibited the keeping of pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad(*d*). On the other hand, a byelaw was upheld which prohibited the keeping of pigs within one hundred feet of a dwelling-house, on the ground that keeping pigs in a town within that distance was likely to be a nuisance and might be prohibited altogether(*e*). In a further case, however, where a rural district had been invested with urban powers, it was held that a byelaw prohibiting the keeping of pigs within fifty feet of any dwelling-house, was bad(*f*). As a general rule byelaws do not now prohibit absolutely the keeping of pigs within a specified distance of dwelling-houses, the prohibition being dependent upon the manner in which the pigs are kept.

In a further case the meaning of the word "keeping" was considered and it was held that where pigs were brought into an urban district in the morning and kept there until the evening, being then removed by railway or otherwise, the pigs were nevertheless "kept" on the premises(*g*). It should be noted that keeping pigs in a city is a nuisance at common law(*h*). Under section 47 of the Public Health Act, 1875(*i*), it was held to be unnecessary to prove that the keeping of pigs was injurious to health, it was sufficient if they were a nuisance(*k*).

The keeping of pigs and poultry on local authorities' housing estates during the war, was referred to by the Ministry of Health in a circular(*l*) issued in 1939. In view of the urgent need for the encouragement of plans for increasing the food supplies of the country, local authorities were advised to review the conditions adopted with respect to the keeping of pigs and poultry on housing estates. The view was expressed that even in normal times it is desirable that the tenants of council houses should be allowed such reasonable freedom to follow these pursuits as is consistent with the preservation of amenities. It is clearly necessary for the good of the community as a whole

(*d*) *Everett v. Grapes* (1861), 25 J.P. 644; 2 Digest 250, 330.

(*e*) *Wanstead L.B. v. Wooster* (1873), 37 J.P. 403; 2 Digest 250, 331.

(*f*) *Heap v. Burnley Union* (1884), 12 Q.B.D. 617; 2 Digest 251, 332.

(*g*) *Steers v. Manton* (1893), 57 J.P. 584; 2 Digest 251, 333.

(*h*) *R. v. Wigg* (1705), 2 Salk. 460; 2 Digest 250, 328.

(*i*) 13 Halsbury's Statutes 645.

(*k*) *Banbury S.A. v. Page* (1881), 8 Q.B.D. 97; 2 Digest 251, 334.

(*l*) Ministry of Health Circular 1908, 7th November, 1939.

that proper safeguards, especially in urban areas, against the possibility of a nuisance being created by poultry keeping should be imposed. These should include the use only of types of hencote approved by the local authority ; control over the siting ; restriction, according to space available, of the number of birds kept by individual tenants ; and a ban on the keeping of male birds of such an age as to be capable of creating a nuisance to neighbours by crowing. The conditions governing the keeping of pigs on housing estates are laid down in the byelaws relating to the keeping of animals, see *infra*. Where local authorities have imposed conditions more restrictive than those laid down in the byelaws, the Minister considers that during the war, such conditions should be modified or removed. Subsequently the matter was dealt with under the Defence Regulations, which provide that notwithstanding any provision to the contrary in any lease or tenancy, or in any covenant, contract or undertaking relating to the use of land, and notwithstanding any restriction imposed by or under any enactment, it is lawful for the occupier of any land to keep pigs, hens or rabbits in any place on the land and to erect buildings for that purpose. This relaxation does not permit the keeping of such animals in a place or manner as to be prejudicial to health or a nuisance, or affect the operation of the Diseases of Animals Acts, 1894 to 1937^(m). In a memorandum issued to local authorities the Ministry of Health drew attention to the Defence Regulation and said that where local authorities had in operation restrictions contrary to the effect of the new Regulation they should inform their tenants that such restrictions had ceased to operate⁽ⁿ⁾.

The Ministry of Health have issued a Model Series of Byelaws relating to the prevention of nuisances from the keeping of animals, details of which are as follows :—

Model Byelaws of the Ministry of Health relating to the keeping of animals.

- 11—A person shall not keep any swine within one hundred feet from any dwelling-house, unless the place in which such swine are kept be maintained in a cleanly and wholesome condition.

OR

- 11—(1) A person shall not in any place keep any swine or deposit any swine's dung within . . . feet from any dwelling-house :
Provided that this byelaw shall not be deemed to prohibit the keeping of swine or the deposit of swine's dung within

(m) Emergency Powers (Defence) General Regulations, No. 62B ; S.R. and O., 1940, No. 1016.

(n) Memorandum 114/90, Ministry of Health, 27th June, 1940.

the said distance of a dwelling-house if the place on which the swine are kept or the dung is deposited—

- (a) is not within the same curtilage as the dwelling-house, and
- (b) was being lawfully used for that purpose at the date of the erection of the dwelling-house and has continued to be so used ever since that date.

Provided also that, where a place is within the said distance of a dwelling-house and was being lawfully used for the keeping of swine or the deposit of swine's dung at the date of the confirmation of these byelaws and has continued to be so used ever since that date, this byelaw shall not be deemed to prohibit the use of that place for the same purpose until the expiration of twelve months from that date.

(Note : In view of the decision in *Heap v. Burnley Union*, *supra*, it is not now the general practice to confirm a byelaw which prohibits absolutely the keeping of pigs within a specified distance of dwelling-houses. Where, however, the circumstances of a particular district justify such a prohibition, model byelaws 11(1), *supra*, may be adopted, in which case model byelaw 11 becomes 11(2). The distance inserted in byelaw 11(1) will, of course, be less than in 11(2)).

- 12—A person shall not keep any cattle or swine or deposit the dung of any cattle or swine in such a situation or manner as to render liable to pollution any water used or likely to be used by man for drinking or domestic purposes or for manufacturing drink for the use of man, or any water used or likely to be used in any dairy.
- 13—(1) Every occupier of a building or premises wherein or whereon any horse or other beast of draught or burden or any cattle or swine may be kept shall provide in connexion with such building or premises—
 - (a) a suitable receptacle or receptacles for all filth produced in the keeping of any such animal in or on such building or premises; and
 - (b) a sufficient drain so constructed and maintained as effectually to convey all urine or liquid filth or refuse from such building or premises into a sewer, cesspool, or other proper receptacle.
- (2) He shall, as regards any receptacle provided in pursuance of this byelaw, comply with the following requirements:—
 - (a) The bottom or floor of the receptacle shall not be lower than the surface of the ground adjoining it;
 - (b) the receptacle shall be so constructed and maintained as to prevent any escape of the contents thereof, or any soakage therefrom into the ground or into the wall of any building;
 - (c) the receptacle shall have a suitable cover, and, when not required to be open, shall be kept properly covered therewith; and
 - (d) the receptacle shall be emptied of its contents once

- (3) Provided that this byelaw shall not apply to any place which is beyond sixty feet from any dwelling-house in another curtilage.

(Note: Sub-clause (3) is only required in districts or parts of districts which are rural in character).

Periodical removal of manure from stables, etc.—Borough and urban district councils and certain rural councils, may by notice require the periodical removal of manure from stables and mews, in accordance with section 80 of the Act of 1936, *infra*.

Section 80, Public Health Act, 1936.—Power to require periodical removal of manure, etc., from stables, etc., in urban district.

- (1) In a borough or urban district, and in a rural district or contributory place in which section fifty of the Public Health Act, 1875, was in force immediately before the commencement of this Act, the local authority may by public or other notice require the periodical removal, at such intervals as may be specified in the notice, of manure or refuse from mews, stables or other premises.
- (2) If a person on whom a notice has been served under this section fails to comply therewith, he shall be liable to a fine not exceeding twenty shillings.

It should be noted that an offence is committed after the public notice or announcement has been given and the service of special notice for each case is not necessary.

A conviction was recorded in a case^(o) where manure from a stable was kept so that the neighbours had to shut their windows. A nuisance at common law may exist where the effluvia from stables is not such as to be injurious to health^(p).

Animals not to be kept in cowsheds and dairies, etc.—Article 20 of the Milk and Dairies Order, 1926^(q), prohibits any swine or poultry being kept in any cowshed or in any room in which cows in milk are kept or milked, or in which milk or milk utensils are kept or in any room or shed communicating directly therewith.

Rats and Mice.—Under the Rats and Mice (Destruction) Act, 1919^(r), a local authority^(s) may serve notice upon the occupier of any land^(t) who fails to destroy rats or mice, to take

(o) *Smith v. Waghorn* (1863), 27 J.P. 744; 36 Digest 179, 238.

(p) See *Rapier v. London Tramways Co.* [1893], 2 Ch. 588; 36 Digest 175, 206.

(q) S.R. and O., 1926, No. 821.

(r) 13 Halsbury's Statutes 963.

(s) "Local authority" means the common council of the City of London, metropolitan borough councils, county and county borough councils, and port health authorities, provided that a county council may delegate its powers to a county district council. *Ibid.*, sect. 2; 13 Halsbury's Statutes 963.

(t) "Land" includes any buildings and any other erection on land, and any cellar, sewer, drain, or culvert in or under land. *Ibid.*, sect. 8; 13 Halsbury's Statutes 963.

the necessary steps for that purpose, and on the failure of the occupier to do so, the authority may do what is necessary and recover the costs incurred from the person upon whom the notice is served^(u). For further details as to the law relating to rats and mice, and the destruction of such rodents, see the author's "Housing Administration"^(x).

Further powers in regard to the destruction of rodents are contained in the Infestation Order, 1943^(y), made by the Minister of Food under the Defence (General) Regulations, 1939. Local sanitary authorities are required to carry out surveys to ascertain the degree of rodent infestation, and to put into operation schemes for the destruction of rats and mice. Persons or firms carrying on the work of destruction of rats and mice—known under the Order as "pest-control undertakers"—may only carry on business in accordance with the terms and conditions of a licence granted by the Minister of Food. The powers and duties contained in the Order are in addition to, and not in derogation from, any duties or obligations imposed upon occupiers of land or local authorities under or pursuant to the Act of 1919, *supra*.

Musk rats.—The musk rat is not a rat within the meaning of the Rats and Mice (Destruction) Act, 1919, and local authorities have no power to deal with land infested with musk rats. County councils may be authorised, through their agricultural committee, to exercise the powers of the Minister of Agriculture and Fisheries conferred by the Destructive Imported Animals Act, 1932^(a), under which the importation of musk rats is either prohibited or controlled. The Ministry is empowered to take steps to destroy musk rats, the presence of which must be reported by the occupier of land to the Ministry. The occupier must co-operate in the methods of destruction. Where the agricultural committee of a county council have delegated powers under the Act of 1932, *supra*, any expenses incurred are paid by the Ministry of Agriculture and Fisheries.

Rabbits.—The Prevention of Damage by Rabbits Act, 1939^(b), empowers the council of a county or county borough, on a complaint made to them by any person that substantial damage is being caused or is likely to be caused to crops, trees, shrubs, pasturage, fences, banks or works on land in that person's occupation, owing to an excessive number of rabbits

(u) *Ibid.*, sect. 5; 13 Halsbury's Statutes 965.

(x) Part VII. Published by Butterworth & Co. (Publishers), Ltd., 1938.

(y) S.R. and O., 1943, No. 680.

(a) 25 Halsbury's Statutes 53.

on land in the occupation of some other person, to serve notice on that other person, requiring that within a reasonable time, not being less than twenty-one days, as may be specified in the notice, he shall—

- (a) in a case in which the land is a warren kept for the purpose of breeding rabbits, so fence the warren as to prevent, so far as is reasonably practicable, the escape of rabbits therefrom ; or
- (b) in any other case, take such steps as are reasonably practicable for the destruction of the rabbits.

If an occupier fails to comply with the terms of a notice, he is liable, on summary conviction, to a fine not exceeding £25(c).

The council of a county or county borough may assist occupiers of land to destroy rabbits, and for that purpose may employ such persons and provide such equipment as may be necessary for the purpose. The local authority may make such reasonable charge for the services rendered as they think fit, and may recover the amount of such charge summarily as a civil debt from the occupier of the land(d).

A person who uses poisonous gas in a rabbit hole, or places in a rabbit hole a substance which, by evaporation or in contact with moisture, generates poisonous gas, is not guilty of an offence under section eight of the Protection of Animals Act, 1911(e). If any person uses or knowingly permits the use of a spring trap, except in a rabbit hole, he is liable to a penalty(f).

Riding establishments.—A local authority(g) may authorise in writing a duly registered veterinary surgeon to inspect any premises they have reason to believe are used as a riding establishment and to examine any horses(h) found therein(i). Penalties may be imposed in any case where, on summary conviction, horses are found to be kept so as to cause suffering thereto(k).

Emergency provisions.—A constable or, if authorised by a chief officer of police, a duly registered veterinary surgeon, may

(c) The Prevention of Damage by Rabbits Act, 1939, sect. 1 ; 32 Halsbury's Statutes 82.

(d) *Ibid.*, sect. 2 ; 32 Halsbury's Statutes 83.

(e) *Ibid.*, sect. 4 ; 32 Halsbury's Statutes 83.

(f) *Ibid.*, sect. 5 ; 32 Halsbury's Statutes 83.

(g) See definition, sect. 3, Riding Establishments Act, 1930 ; 32 Halsbury's Statutes 85.

(h) See definition, *ibid.*

(i) *Ibid.*, sect. 1 ; 32 Halsbury's Statutes 84.

(k) *Ibid.*, sect. 2 ; 32 Halsbury's Statutes 84.

slaughter a dangerous or injured animal in the event of hostile attack^(l).

Insect pests. (ll)—Insect pests, such as flies, mosquitoes, etc., may be present to such an extent as to call for action by the local authority. There are no special powers relating to such cases, and the only way of dealing with them is to utilise the nuisance sections of the Public Health Act, 1936. In this connection it must be remembered that flies breed most prolifically in accumulations of manure and that mosquitoes breed in stagnant water. Section 92 of the Act of 1936 (see *ante*, p. 219) includes within the definition of a statutory nuisance—

(a) any premises in such a state as to be prejudicial to health or a nuisance ;

(c) any accumulation or deposit which is prejudicial to health or a nuisance ;

Under section 259, Public Health Act, 1936 (see *post*, p. 296), any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance, is a statutory nuisance liable to be dealt with under the provisions of that Act relating to nuisances.

At the Paisley Sheriff Court on June 14th, 1927, certain ditches infested by mosquitoes were held to be a nuisance within the meaning of the Public Health (Scotland) Act, and the defendant was ordered to have them cleansed. There does not appear to have been a case of this kind in the English Courts.

(c) Any accumulation or deposit which is prejudicial to health or a nuisance.—Where proceedings are taken before a court under section 94 of the Act of 1936 (see *post*, p. 235), subsection (4), *infra*, applies—

Section 94, Public Health Act, 1936.—Power of court to make nuisance order if abatement notice disregarded.

- (4) Where proceedings are brought under this section in respect of a nuisance under paragraph (c) of subsection (1) of section ninety-two of this Act (which relates to certain accumulations or deposits) it shall be a defence for the defendant to prove that the accumulation or deposit complained of was necessary for the effectual carrying on of a business or manufacture and has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best practicable means have been taken for preventing it from being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood.

(l) Defence (General) Regulations, Regulation 79B, S.R. and O., 1940, No. 1134 ; 34 Halsbury's Statutes 772.

(ll) For details of life history, habits, etc., see the author's *Housing Administration*. 2nd Edn. p. 447 *et seq.*

A sanitary inspector in a borough or urban district, or in a rural district or contributory place where section 49 of the Public Health Act, 1875^(m), was in force immediately prior to the commencement of the Act of 1936, has power, under section 79 of the Act of 1936 (see *ante*, p. 192) to serve notice upon the owner of any manure or noxious matter or upon the occupier of the premises where it is found, requiring its removal within twenty-four hours. If the matter is not removed in accordance with the notice, the sanitary inspector may remove it and the local authority may recover the expenses incurred from the owner or occupier in default.

An accumulation of stable manure, which may be dealt with under section 79, *supra*, which is prejudicial to health or a nuisance, may also be dealt with under section 92, *ante*, p. 219⁽ⁿ⁾. Under corresponding provisions in the older Act, an accumulation of seaweed which drifted into a harbour and became a nuisance must be removed by the Harbour Company^(o). Where sheep were kept in pens in a market, the owner thereof was held liable for a nuisance which arose from the sheep droppings left in the pens^(p). The court refused to grant an injunction against a railway company in respect of an alleged nuisance arising from open trucks loaded with house refuse which were left standing at a junction for some hours^(q).

Coal mine refuse.—An accumulation or deposit of refuse from a coal mine in respect of which there is reasonable cause to believe that spontaneous combustion is likely to occur, is deemed to be an accumulation or deposit which is prejudicial to health or a nuisance, provided that proceedings under Part III of the Act of 1936 (see *post*, p. 235 *et seq.*) in respect of any such accumulation or deposit cannot be instituted except with the consent of the Minister of Health^(r). In this connection, see the case of *Bishop Auckland L.B. v. Bishop Auckland Iron Co.*, *ante*, p. 221.

(d) **Any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood.**—This definition replaced section 114 of the Public Health Act,

(m) 13 Halsbury's Statutes 646.

(n) *Smith v. Waghorn* (1863), 27 J.P. 744; 36 Digest 179, 238.

(o) *Margate Pier and Harbour Proprietors v. Margate Town Council* (1869), 33 J.P. 437; 36 Digest 179, 240.

(p) *Draper v. Sperring* (1861), 25 J.P. 566; 36 Digest 179, 237.

(q) *Att.-Gen. v. S.E. and C. Rail. Co.'s Managing Committee* (1902), 24 M.C.C. 343; and see *ante*, p. 200.

(r) *Coal Mine (Refuse) Act, 1920*; 39 Halsbury's Statutes 541.

1875(s), being extended to include dust as well as effluvia. Where proceedings are taken before a court under section 94 of the Act of 1936 (see *post*, p. 235), subsection (5), *infra*, applies.

Section 94, Public Health Act, 1936.—Power of court to make nuisance order if abatement notice disregarded.

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- (5) Where proceedings are brought under this section in respect of a nuisance under paragraph (d) of subsection (1) of section ninety-two of this Act (which relates to dust or effluvia caused by any trade, business, manufacture or process), it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing, or counteracting the effect of, the dust or effluvia.

Reference should be made to chapter 10, relating to offensive trades, *post*, p. 251, and to chapter 11, relating to smoke nuisances, *post*, p. 268.

Under the repealed section 114, *supra*, it was held that if the effluvia caused annoyance and discomfort, it was sufficient to bring the trade within the section even though it was not injurious to health(*t*). Portland cement works were held to be a nuisance under this section(*u*). In a further case(*a*), the medical officer of health's certificate that a fried fish shop was a nuisance, was accepted, although the certificate did not state it was injurious to health. It was not necessary under the repealed section for a local authority to serve a nuisance notice before taking proceedings(*b*), but under the new provisions—the offence being defined as a statutory nuisance—it will be necessary to follow strictly the procedure for dealing with nuisances.

It should be noted that the expression “dust” does not include dust emitted from a chimney as an ingredient of smoke(*c*).

(e) Any workplace not properly ventilated, or not kept clean, or not kept free from effluvia, or which is overcrowded so as to be prejudicial to the health of those employed therein.—It should be noted that in accordance with subsection (3) of section 92 of the Act of 1936, *ante*, p. 219, the provisions

(s) 13 Halsbury's Statutes 671.

(t) *Malton Urban Sanitary Authority v. Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302; 36 Digest 171, 128.

(u) *Umfreville v. Johnson* (1875), L.R. 10 Ch. 580; 38 Digest 550, 1575.

(a) *Holdershaw v. Martin* (1885), 49 J.P. 179.

(b) *Bird v. St. Mary Abbots, Kensington (Vestry of)*, [1895] 1 Q.B. 912; 36 Digest 171, 132.

relating to ventilation do not apply in the case of a shop to which the Shops Act, 1934(*d*), applies. Reference should be made to chapter 15, *post*, p. 356, for details regarding shops.

(f) **Any other matters declared by any provision of this Act to be a statutory nuisance.**—The following have been defined as “statutory nuisances” elsewhere in the Act, *viz.* :—

- i—Smoke nuisances—section 101 (see *post*, p. 268).
- ii—Insanitary cisterns, etc.—section 141 (see *ante*, p. 176).
- iii—Nuisances in connection with watercourses, ditches, ponds, etc.—section 259 (see *post*, p. 296).
- iv—Nuisances in connection with tents, vans, sheds and similar structures—section 268 (see *post*, p. 395).

SERVICE OF ABATEMENT NOTICE.

Where a local authority are satisfied that a statutory nuisance exists, they *must* serve a notice in accordance with section 93, *infra*, requiring the abatement of the nuisance. The notice is called “an abatement notice” and must be served upon the person by whose act, default or sufferance the nuisance arises or continues.

Section 93, Public Health Act, 1936.—Service of abatement notice.

Where a local authority are satisfied of the existence of a statutory nuisance, they shall serve a notice (hereinafter in this Act referred to as “an abatement notice”) on the person by whose act, default or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose :

Provided that—

- (a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises ;
- (b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the local authority may themselves do forthwith what they consider necessary to abate the nuisance and to prevent a recurrence thereof.

It is important to observe that the local authority have no option as to the service of the abatement notice. If they are satisfied that the nuisance exists, they are bound to serve notice. A local authority usually become aware of the exist-

ence of nuisances as a result of a report by the sanitary inspector. The form of report or information as to the existence of a nuisance, has not been prescribed but the following is suitable for the purpose.

Section 93, Public Health Act, 1936.

I have to report that a nuisance exists at No.
, arising from

and I recommend that an abatement notice be served upon the owner of the said house, under the provisions of section 93 of the Public Health Act, 1936, requiring the abatement of the said nuisance within a period of days.

(signed) A. B.,

Sanitary Inspector.

Although the Public Health Act does not require the service of an informal, preliminary or intimation notice, as to the existence of a nuisance, it is the general practice for such a notice to be issued, and it is always wise to do so. By far the majority of nuisances are remedied as a result of informal action taken by the sanitary inspector. By this means, much time and needless work is saved, the nuisances being abated sooner than would be the case if the strict legal procedure had to be followed in every case.

The form of statutory notice for the abatement of nuisances may be prescribed by the Minister of Health (see *ante*, p. 59). It was held that the forms in the repealed Schedule IV of the Public Health Act, 1875(*e*), indicated what the forms used by local authorities should contain and that they need not be followed precisely(*f*). Details as to the service of notices, etc., are given in chapter 4 (see *ante*, p. 62).

Notices issued under section 93, *ante*, p. 231, can only be served upon the instructions or direction of the local authority; an officer has no right to issue a notice on his own initiative(*g*). In a case where the public health committee of a vestry authorised the service of a notice and if necessary the institution of legal proceedings, and after the issue of the summons but before the actual hearing, the vestry confirmed the action of the committee, it was held that a sufficient approval had been given to support the summons(*h*). It is sufficient if a committee of the local authority consider the matter, and the

(*e*) 13 Halsbury's Statutes 773.

(*f*) *Stourbridge U.D.C. v. Butler and Grove*, [1909] 1 Ch. 87; 26 Digest 525, 2252.

(*g*) *St. Leonard's, Shoreditch (Vestry of) v. Holmes* (1885), 50 J.P. 132; 41 Digest 41, 299; and *Bowyer, Philpott and Payne, Ltd. v. Mather*, [1919] 1 K.B. 419; 38 Digest 169, 131.

(*h*) *Birch v. Staines*, [1897] 2 O.B. 70; 38 Digest 169, 130.

committee's report is approved by the authority(*i*). It should be remembered in this connection that under section 85 of the Local Government Act, 1933(*k*), a local authority may delegate to a committee their powers in respect of, *inter alia*, the abatement of nuisances, and under section 273 of the Act of 1936, to a sub-committee (see *ante*, p. 33).

An abatement notice must be served upon the person "by whose act, default or sufferance" the nuisance arises or continues, but where the nuisance is due to a defect of a structural character, the notice *must* be served upon the owner of the premises. Where a notice to abate a nuisance was served upon the occupier and in the course of the execution of the work it was found that the nuisance arose as a result of a structural defect, it was held that the occupier could recover from the owner the expenses incurred(*l*). If the person by whose act, default or sufferance the nuisance arises cannot be found, the owner or occupier may be served with the notice, or the local authority may themselves abate the nuisance. It was held in an early case(*m*) that the occupier and not the owner was *prima facie* liable for a nuisance arising from defective drainage, but proviso (a) to section 93, *ante*, p. 231, would seem to transfer the liability to the owner where the defect is one of construction. It was held in another case(*n*) that the occupier was liable for injury to a neighbour arising from the continuance of artificial work, even though it was put there before he took possession. Where a nuisance is due to the dangerous condition of premises demised to the tenant and he is liable to repair under a covenant, the landlord is not liable in respect of the nuisance unless he has done something authorising the continuance of the dangerous state of the premises(*o*). Where an owner has undertaken the duty of executing any necessary repairs, he is liable for the existence of a nuisance arising from non-repair(*p*). A local authority are not entitled to order the conversion of privies to waterclosets in order to abate a nuisance arising from their failure to eradicate typhoid fever germs which had lodged in the brickwork of the privy causing the nuisance(*q*). In the case of structural defects causing nuisance, it should be noted that the definition of "owner"

(*i*) *Agnew v. Manchester Corpn.* (1902), 67 J.P. 174; 38 Digest 228, 592.

(*k*) 26 Halsbury's Statutes 352.

(*l*) *Gebhardt v. Saunders*, [1892] 2 Q.B. 452; 36 Digest 231, 716.

(*m*) *Russell v. Shenton* (1842), 3 Q.B. 449; 36 Digest 215, 583.

(*n*) *Broder v. Saillard* (1876), 2 Ch.D. 692; 36 Digest 190, 321.

(*o*) *Pretty v. Bickmore* (1873), L.R. 8 C.P. 401; 31 Digest 345, 4881.

(*p*) *Leslie v. Pounds* (1812), 4 Taunt. 649; 31 Digest 344, 4872.

(*q*) *Barnett v. Laskey* (1898), 68 L.J.Q.B. 55; 38 Digest 236, 659.

in section 343 of the Public Health Act, 1936(r), includes the agent who receives the rack-rent, who may be served with the notice(s), and a nuisance order may be made by the court under section 94 (see *post*, p. 235) upon such an agent though he has resigned his position since the service of the abatement notice(t).

Difficulty sometimes arises in the service of abatement notices, where it is necessary for the person upon whom the notice would otherwise be served, to go on to land owned by some other person, and by so doing he may commit trespass. There have been several cases on this point and the decisions appear to be somewhat in conflict. In some instances it was held that notice could not be served upon a person in the above circumstances(u), whilst in some cases, contrary decisions were given(a). The point is one of considerable difficulty and care should be taken to examine the position thoroughly before the service of the notice.

It should be noted that under section 290 of the Act of 1936 (see *ante*, p. 64) a notice requiring the execution of works must state the time within which they are to be executed and although this section does not apply in the case of notices requiring the abatement of nuisances, it has been held that a notice requiring the abatement of a nuisance forthwith, specifies sufficiently the time within which the nuisance should be abated(b). Except in cases of extreme urgency, however, such for example as a choked sanitary fitting or a very offensive accumulation, it is always wise to allow sufficient time for the abatement of the nuisance, and to specify rather more time than is absolutely necessary for the purpose.

The notice should indicate the nature of the works required for the abatement of the nuisance but it should leave to the person upon whom the notice is served, the right of deciding which of the several methods available, shall be adopted to remedy the matter. It is important that an authority should not lightly refuse to accept some other means of abating a nuisance than that specified in their notice, and they

(r) 29 Halsbury's Statutes 538.

(s) *Broadbent v. Shepherd* (1900), 65 J.P. 70; 36 Digest 237, 765.

(t) *Broadbent v. Shepherd* (No. 2), [1901] 2 K.B. 274; 36 Digest 237, 765.

(u) *Scarborough Corpn. v. Scarborough R.S.A.* (1876), 1 Ex. D. 344; 36 Digest 235, 745. *R. v. Cumberland J.J., ex parte Trimble* (1877), 41 J.P. 454; 36 Digest 235, 746. *Letterkenny Commissioners v. Collins* (1891), 28 L.R.Ir. 235. *Arlidge v. Islington B.C.*, [1909] 2 K.B. 127; 38 Digest 164, 101. *Meyrick v. Pembroke Corpn.* (1912), 76 J.P. 365; 31 Digest 36, 267.

(a) *Parker v. Inge* (1886), 17 Q.B.D. 584; 36 Digest 235, 747. *Broadbent v. Shepherd* (No. 2), *supra*.

(b) *Thomas v. Western Steam Trawling Co.* (1894), 59 J.P. 232; 36 Digest 232, 724.

should only do so where they are satisfied that the alternative proposed will not abate the nuisance or if it will abate it, that the nuisance will probably recur.

In some cases, it may be found that the nuisance does not arise, either by the act, default or sufferance of the owner or the occupier, and that the person responsible cannot be found. In such circumstances, the local authority may themselves abate the nuisance and under section 94(6) of the Act of 1936, a nuisance order (see *post*, p. 236) made by a court may be addressed to the local authority.

POWER OF COURT TO MAKE ORDER REQUIRING ABATEMENT OF NUISANCE.

If an abatement notice is not complied with, or having been complied with, the nuisance is likely to recur on the same premises, the local authority *must* cause a complaint to be made to a justice in accordance with section 94(1) of the Act of 1936, *infra*, and the justice *must* cause a summons to be issued calling upon the person on whom the notice was served to appear before the court.

Section 94, Public Health Act, 1936.—Power of court to make nuisance order if abatement notice disregarded.

- (1) If the person on whom an abatement notice has been served makes default in complying with any of the requirements of the notice, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the authority shall cause a complaint to be made to a justice of the peace, and the justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

The form of summons may be prescribed by the Minister of Health in accordance with section 283(2) of the Act of 1936 (see *ante*, p. 59). Details as to the institution of legal proceedings will be found in chapter 4 (*ante*, p. 69 *et seq.*).

It should be noted that neither the local authority or the justices have an option in the matter, but it was held in a case(c), that the justices could, at their discretion, refuse to issue a summons, even if they had evidence before them as to the existence of the nuisance, if they considered that to do so would be a vexatious and improper proceeding. It is desirable that the information as to a nuisance should be in writing.

Legal proceedings for the abatement of nuisances can

only be taken within six months from the date of expiration of the period specified in the abatement notice for the execution of the works(*d*). See also chapter 4 (*ante*, p. 69).

Action cannot be taken for malicious prosecution under section 94(1), *ante*, p. 235, either against the officer concerned or the local authority who instructed him to take the action(*e*).

If the complaint is proved to the satisfaction of the court, they are empowered by subsection (2) of section 94, *infra*, to make a nuisance order requiring the abatement of the nuisance within a specified period and/or the prohibition of a recurrence thereof. In addition, a penalty may be imposed.

Section 94(2), Public Health Act, 1936.—Power of court to make nuisance order if abatement notice disregarded.

(2) If on the hearing of the complaint it is proved that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, then, subject to the provisions of subsections (4) and (5) of this section the court shall make an order (hereinafter in this Act referred to as "a nuisance order") for either, or both, of the following purposes—

(a) requiring the defendant to comply with all or any of the requirements of the abatement notice, or otherwise to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

(b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent a recurrence;

and may also impose on the defendant a fine not exceeding five pounds.

Where a nuisance proved to exist is such as to render a building, in the opinion of the court, unfit for human habitation, the nuisance order may prohibit the use of the building for that purpose until a court of summary jurisdiction, being satisfied that it has been rendered fit for human habitation, withdraws the prohibition.

It should be noted that the court must have regard to the provisions of subsection (4) (see *ante*, p. 228) and subsection (5) (see *ante*, p. 230) relating to nuisances from accumulations or deposits, and dust or effluvia, respectively.

The form of nuisance order may be prescribed by the Minister of Health (see *ante*, p. 59). The court have power to prohibit the use of a building for human habitation, until they are satisfied that it has been rendered fit therefor. In this connection reference should be made to the powers of local authorities under the Housing Act, 1936(*f*), with regard to the repair and demolition of insanitary dwelling-houses.

(*d*) Sect. 11, Summary Jurisdiction Act, 1848; 11 Halsbury's Statutes 278.

(*e*) *Wiffen v. Bailey and Romford U.D.C.*, [1915] 1 K.B. 600; 33 Digest 470, 37.

(*f*) 29 Halsbury's Statutes 565; and see the author's "Housing Administra-

It should also be noted that under section 268(5) of the Act of 1936 (see *post*, p. 395), the court may make an order prohibiting a tent, van, shed or other similar structure from being used for human habitation at such places, or within such areas, as may be specified in the order.

The justices must consider whether the nuisance, having been proved to exist, is likely to recur(*g*). The order of the court should normally specify the work necessary to abate the nuisance and presumably would follow closely the lines of the abatement notice served by the local authority, if the court were satisfied that the terms of the notice were reasonable. It was held that the court are not entitled to require the substitution of a pail closet for a privy, unless it was essential to do so to abate the nuisance(*h*), but where an order of the court required a watercloset to be removed from an internal wall to an external wall of the house, it was upheld on appeal on the grounds that it was necessary to remove the closet in order to abate the nuisance(*i*). In a later case, however, *ex parte* Whitchurch was overruled, the court holding that there was jurisdiction to make an order(*h*). In a further case, an order requiring the filling in of privies and ashpits, and their conversion to waterclosets connected to the public sewer was held to be good(*l*). An order was made by the justices requiring the abatement of a nuisance arising from untrapped drains and for that purpose "to execute such works and do such things as may be necessary for that purpose, so that the same shall no longer be a nuisance or injurious to health." The Order was held to be bad, as it did not specify the nature of the work which the owner had to carry out to abate the nuisance(*m*), but a notice to abate a nuisance arising from the emission of black smoke from a factory chimney need not necessarily specify the works to be done to abate the nuisance(*n*).

In certain cases, it may be found that although the nuisance existed at the time of the service of the abatement notice and continued until the laying of the information, it was abated or discontinued before the hearing of the case in

(*g*) *Barnes v. Ackroyd* (1872), L.R. 7 Q.B. 474; 36 Digest 183, 276.

(*h*) *Ex parte Whitchurch* (1881), 6 Q.B.D. 545; 36 Digest 236, 751.

(*i*) *Ex parte Saunders* (1883), 11 Q.B.D. 191; 36 Digest 236, 752.

(*h*) *R. v. Kent J.J.* (1885), 1 T.L.R. 539.

(*l*) *Whittaker v. Derby U.S.A.* (1885), 66 L.J.M.C. 8; 36 Digest 236, 755.

(*m*) *R. v. Wheatley* (1885), 16 Q.B.D. 34; 36 Digest 236, 756.

(*n*) *Millard v. Wastall*, [1898] 1 Q.B. 342; 36 Digest 232, 725; followed in *Central London Rail. Co. v. Hammersmith B.C.* (1904), 73 L.J.K.B. 623; 36 Digest 237, 760; and *Tough v. Hopkins*, [1904] 1 K.B. 804; 36 Digest 182, 271.

court. To meet these cases, subsection (3) of section 94 of the Public Health Act, 1936, *infra*, has been inserted.

Section 94 (3), Public Health Act, 1936.—Power of court to make nuisance order if abatement notice disregarded.

- (3) Where on the hearing of a complaint under this section it is proved that the alleged nuisance existed at the date of the service of the abatement notice and that at the date of the making of the complaint it either still existed or was likely to recur, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant to pay to the local authority such reasonable sum as the court may determine in respect of the expenses incurred by the authority in, or in connection with, the making of the complaint and the proceedings before the court.

CONTRAVENTION OF NUISANCE ORDER.

Where a nuisance order, made by a court, is not obeyed, the person upon whom the order is made is liable to a penalty in accordance with section 95 of the Act of 1936, *infra*, and the local authority are entitled to execute the work specified in the order.

Section 95, Public Health Act, 1936.—Penalty for contravention of nuisance order, and abatement of nuisance by local authority.

- (1) Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.
- (2) Without prejudice to the foregoing provisions of this section, where a nuisance order has not been complied with, the local authority may abate the nuisance, and do whatever may be necessary in execution of the order.

APPEAL AGAINST DECISION OF COURT OF SUMMARY JURISDICTION.

Where a person is aggrieved by a decision of a court of summary jurisdiction, an appeal may be made to a court of quarter sessions, in accordance with section 301 of the Act of 1936 (see *ante*, p. 68), but quarter sessions cannot consider the validity of the abatement notice(o).

COSTS OF LOCAL AUTHORITY IN ABATING NUISANCES.

Where a local authority have executed work in connection with the abatement of a nuisance, as empowered by section 95, *supra*, section 96, *post*, p. 239, provides for the recovery of their expenses incurred in so doing.

Section 96, Public Health Act, 1936.—Costs of local authority in abating, or preventing recurrence of, nuisance.

- (1) Any expenses reasonably incurred by a local authority under this Part of this Act in abating, or preventing the recurrence of, a statutory nuisance in respect of which a nuisance order has been made may be recovered by them—

(a) where the order was made on some person other than the local authority, from that person ;

(b) where the order was made on the local authority, from the person by whose act or default the nuisance was caused,

and, in either case, if the person in question is the owner of the premises, from any person who is for the time being the owner thereof.

- (2) In proceedings to recover any such expenses as aforesaid, the court shall have power to apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court may deem fair and reasonable.

It should be noted that the limitation imposed by the repealed section 104 of the Public Health Act, 1875(*p*), that the costs and expenses shall not exceed in the whole, one year's rack-rent of the premises, has been omitted from section 96, *supra*. The effect of this omission is that so long as the expenses incurred are reasonable, the local authority may recover under section 96 irrespective of the amount. Reference should be made to the provisions of section 291 of the Act of 1936 (see *ante*, p. 74) with regard to the recovery of expenses. Where the person in default is the owner, that section makes the sum recoverable a charge on the land and the local authority may recover it by instalments from the owner or occupier of the premises for the time being.

Certain cases have been decided as to the recovery of expenses incurred either by a tenant or a local authority, where the liability was on the owner, and also in cases where work was executed by the owner, where the liability was on the local authority. It was held in the first case, that it was not necessary for a statutory notice to have been served by the local authority before a tenant may recover from the owner, provided it can be shown that the authority took steps which practically amounted to compulsion. In this case an informal notice, signed by the sanitary inspector, had been served requiring the repair of drains within seven days(*q*). Where the owner of a house, under protest, repaired a drain which was considered to be a sewer, and afterwards sued the local authority for the recovery of the expenses incurred, it was held that the work was done under

(*p*) 13 Halsbury's Statutes 666.

(*q*) *North v. Walthamstow U.D.C.* (1898), 67 L.J.Q.B. 972 ; 36 Digest 234,

compulsion and that the owner was entitled to recover from the authority(r). The tenants of some houses who had complied with notices served by a local authority the owners having failed to abate the nuisance, recovered the expenses from the owner(s).

NUISANCES CAUSED BY MORE THAN ONE PERSON.

It not infrequently happens that nuisances arise by the act or default of two or more persons and section 97 of the Act of 1936, *infra*, empowers a local authority to take action in such cases either against one or all of such persons.

Section 97, Public Health Act, 1936.—Proceedings where nuisance caused by acts or default of more than one person.

- (1) Where a statutory nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons, proceedings may be instituted under the foregoing provisions of this Part of this Act against any one of them, or all or any two or more of them may be included in the same proceedings; and, subject to those provisions, any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the court, contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance, and the costs may be apportioned as the court may deem fair and reasonable.
- (2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but may be carried on as if the deceased person had not been so included.
- (3) Where some only of the persons by whose acts or defaults a nuisance has been caused have been proceeded against under this Act, they may, without prejudice to any other remedy, recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of, and incidental to, the proceedings and the abatement of the nuisance, and of any fine or costs ordered to be paid in the proceedings.

It will be observed that an abatement notice may be served by a local authority on any one or more of the persons concerned and that the court may make an order requiring any one or more of those persons to abate the nuisance. Where the nuisance is abated by some only of the persons responsible, the persons abating the nuisance may recover a proportionate part of the costs from the other persons.

(r) *Haedicke v. Friern Barnet U.D.C.*, [1904] 2 K.B. 807; 12 Digest 530, 4412; reversed on appeal on another ground.

jointly responsible with them for the occurrence of the nuisance.

NUISANCES ARISING OUTSIDE DISTRICT OF LOCAL AUTHORITY.

Section 98 of the Act of 1936, *infra*, enables a local authority to take action where a nuisance affects their district but arises outside it. Similar action may be taken as in the case of nuisances arising within the district of the local authority, except that any legal proceedings must be taken before a court having jurisdiction in the place where the nuisance arises, that is to say, in the district adjoining that of the authority taking the proceedings. This procedure arises chiefly in connection with smoke nuisances, where works are situated on or near to the boundaries of districts, whereby the smoke is blown into the adjoining area. It may also arise with regard to nuisances due to the placing of offensive matter into streams, which is conveyed to some other district(*t*). It should be noted that proceedings may be taken by a local authority bordering upon London, where the nuisance is due to some act or default within the London Area, but the provisions in the repealed section 108 of the Public Health Act, 1875(*u*), empowering a metropolitan borough council to take proceedings where the converse is the case, is not re-enacted, as the matter is dealt with in the Public Health (London) Act, 1936(*x*).

Section 98, Public Health Act, 1936.—Power to proceed where cause of nuisance arises outside district.

- (1) Where a nuisance within, or affecting any part of, the district of a local authority appears to be wholly or partly caused by some act or default committed or taking place outside their district, the authority may take, or cause to be taken, against any person in respect of that act or default any proceedings in relation to nuisances by this Act authorised in the like cases, and with the like incidents and consequences, as if the act or default were committed or took place wholly within their district, so however that summary proceedings shall only be taken before a court having jurisdiction in the place where the act or default is alleged to be committed or to take place.
- (2) This section shall extend to London so far as to authorise proceedings to be taken under it in respect of any nuisance within, or affecting any part of, the district of a local authority, where that nuisance is wholly or partly caused by some act or default committed or taking place in London.

(*t*) See *R. v. Cotton* (1858), 1 El. and El. 203 ; 36 Digest 235, 739.

(*u*) 13 Halsbury's Statutes 668.

(*x*) Sect. 282 and 5th Sched., clause 22.

PROCEEDINGS IN THE HIGH COURT.

Section 100 of the Act of 1936, *infra*, empowers a local authority to take proceedings in the High Court where they are of opinion that summary proceedings would afford an inadequate remedy.

Section 100, Public Health Act, 1936.—Local authority may take proceedings in High Court for abatement of statutory nuisance.

If in the case of any statutory nuisance the local authority are of opinion that summary proceedings would afford an inadequate remedy, they may in their own name take proceedings in the High Court for the purpose of securing the abatement or prohibition of that nuisance, and such proceedings shall be maintainable notwithstanding that the authority have suffered no damage from the nuisance.

Where action is taken under this section for the abatement of a public nuisance, it must be taken in the name of the Attorney-General, except where some proprietary right of the local authority has been interfered with(*a*), but where the nuisance affects property belonging to the authority, they may themselves also maintain an action for damages(*b*). There are numerous other cases on this point(*c*), from which it appears that the Attorney-General is concerned in all cases where the public right is interfered with. Indeed it has been held that he is concerned with the rights of the public as a whole, and not small portions of it(*d*). It should be noted that action may only be taken under section 100, *supra*, where a statutory nuisance exists; it does not apply to all nuisances. This is a point of some importance, as on many occasions local authorities are asked to take action in respect of, *inter alia*, noise nuisances, which would not come within the definition of a statutory nuisance. In such cases, the local authority cannot take action under the Act of 1936. As to whether action could be taken by the authority, acting as a corporate body, in respect of a common law nuisance, is a matter for expert legal opinion in each individual case.

NUISANCES AT MINES.

Nothing in Part III of the Act of 1936 (relating to statutory nuisances) applies to mines of any description so as to interfere with, or obstruct the efficient working of, the mine(*e*).

(*a*) Wallasey L.B. v. Gracey (1887), 36 Ch. D. 593; 36 Digest 210, 533.

(*b*) Att.-Gen. v. Logan, [1891] 2 Q.B. 100; 36 Digest 182, 263.

(*c*) See notes to sect. 100, Public Health Act, 1936, Lumley's Public Health, 11th Edition.

(*d*) Att.-Gen. and Spalding R.D.C. v. Garner, [1907] 2 K.B. 480; 33 Digest 102, 692.

(*e*) Public Health Act, 1936, *post* p. 277.

This applies to all nuisances, not only those arising from smoke, but it should be noted that the saving only applies so as not to interfere with or obstruct the efficient working of the mine. If the nuisance can be abated without affecting the working of the mine, the local authority are entitled to take action.

NUISANCES ON SHIPS.

Part III of the Act of 1936 applies in the case of nuisances on ships, in accordance with the provisions of section 267 (see *ante*, p. 83).

Houseboats.—There is no general enactment enabling local authorities to control houseboats, although a few local authorities have obtained power in private Acts to do so(*f*). Where waters are under the control of a conservancy, etc., houseboats are usually subject to control by byelaws(*g*). In the case of a houseboat moored permanently at one point, and either the adjacent land or the houseboat itself is in such a state as to be a nuisance, it could probably be dealt with under section 93 of the Act of 1936 (see *ante*, p. 231), and an abatement notice served. In the case of houseboats not permanently moored at one point, it would appear that the local authority has no power of control. Section 267 of the Act of 1936 (see *ante*, p. 83) only applies the provisions of the Act to “vessels,” defined in the Merchant Shipping Act, 1894, as including “any ship or boat, or any other description of vessel used in navigation.” It is unlikely that a houseboat would come within this definition.

MISCELLANEOUS NUISANCES.

There are a number of miscellaneous matters which are dealt with as nuisances, details of which are as follows:—

(a) **Fencing of mines and quarries.**—Section 13 of the Metalliferous Mines Regulation Act, 1872(*h*), provides that any shaft or side entrance of a mine which is abandoned or the working thereof discontinued, which is not fenced as required by that section and which is within fifty yards of

(*f*) *E.g.* Bournemouth Corp'n. Act, 1930 (20 & 21 Geo. 5, c. clxxxii), ss. 207–209; etc.

(*g*) *E.g.* by byelaw 49 of the Thames Conservancy (Navigation and General) Byelaws, 1934 (made under the Thames Conservancy Act, 1932), the owner or master of any vessel on the Thames above Teddington Lock must take precautions to prevent the passage of sewage or other offensive matter from the vessel into the river.

(*h*) 12 Halsbury's Statutes 23.

any highway, road, footpath, or place of public resort, or is in open or unenclosed land, shall be deemed to be a nuisance within the meaning of the Public Health Act, 1936. It should be noted that when the Act of 1872 was passed, nuisances were dealt with under the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866, but by section 38(1) of the Interpretation Act, 1889(*i*), in any Act passed after the date of that Act which repeals or re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. The effect of section 38(1), *supra*, is that where reference is made, either to the Acts of 1855 and 1866, *supra*, or to the Public Health Act, 1875, and the provisions of those Acts have been re-enacted in the Act of 1936, the references in the earlier Acts shall be construed as references to the Act of 1936. In other words, an unfenced mine under section 13, *supra*, may now be dealt with under the nuisance provisions of the Act of 1936. This procedure applies in other cases of a similar nature, including the Quarry Fencing Act, 1887, and the Coal Mines Act, 1911, *infra*.

Section 13 of the Act of 1872, *supra*, applies to a mine which was dis-used or abandoned prior to the Act(*k*). Notice must be given to an inspector of mines when a shaft is abandoned or working therefrom discontinued(*l*). Section 13, *supra*, does not apply to mines dealt with by the Coal Mines Act, 1911(*m*). Section 1 of that Act defines the expression " mines " as mines of coal, mines of stratified ironstone, mines of shale, and mines of fireclay. Where any such mine is abandoned or discontinued, the shaft or outlet must be properly surrounded by a suitable structure to prevent accidents, and any shaft or outlet not so kept, is deemed to be a nuisance within the meaning of the Act of 1936(*n*).

Unfenced disused coal mines are therefore dealt with under the Act of 1911, *supra*, and other disused mines under the Act of 1872.

Section 3 of the Quarry (Fencing) Act, 1887(*o*), makes an unfenced quarry a nuisance within the meaning of the Act

(*i*) 18 Halsbury's Statutes 1005.

(*k*) *Stott v. Dickinson* (1876), 34 L.T. 291; 34 Digest 738, 1153.

(*l*) Sect. 12, Metalliferous Mines Regulation Act, 1872; 12 Halsbury's Statutes 23.

(*m*) 12 Halsbury's Statutes 82.

(*n*) Sect. 26, Coal Mines Act, 1911; 12 Halsbury's Statutes 96.

of 1936. It was held that members of a district council were not liable to a charge of manslaughter in a case where a person was killed by falling into a quarry in respect of which the council failed to take action under section 3, *supra*(p). It should be noted that the Quarry Fencing Act differs from the two Acts relating to mines, in that the former applies to quarries in use as well as disused, whereas the latter refer to disused mines only.

(b) **Steam whistles.**—Under the Steam Whistles Act, 1872(q), no person may use any steam whistle for the purpose of summoning or dismissing workmen or persons employed, without the consent of the sanitary authority. The local authority may withdraw their sanction previously given, after one month's notice to the person using the whistle, and on the representation of any person that he is prejudicially affected by such a whistle, the Minister of Health may revoke a sanction given by a local authority. It was held that a whistle blown by compressed air came within the provisions of the Act(r).

The sounding of a whistle, etc., otherwise than as an air raid warning and under directions of a local authority or chief of police, is an offence under the Defence (General) Regulations(s).

(c) **Barbed Wire.**—Under the Barbed Wire Act, 1893(t), a local authority are empowered to serve notice upon the occupier of any land adjoining a highway which is fenced with barbed wire, such wire being a nuisance to the highway. The notice will require the abatement of the nuisance, within a specified period, not being less than one month nor more than six months, and if the occupier of the land fails to abate the nuisance, the local authority may apply to a court of summary jurisdiction for an order to do what is necessary. Upon failure to comply with an order of the court, the local authority may do the work in default and recover the expenses incurred in a summary manner. If the land belongs to a local authority, a notice may be served by any ratepayer upon the clerk of the authority, and the ratepayer may take the same actions as a local authority.

(p) *R. v. Clerk of Assize of Oxford Circuit*, [1897] 1 Q. B. 370; 13 Digest 249, 228.

(q) 8 Halsbury's Statutes 498.

(r) *Herbert v. Leigh Mills Co.* (1889), 53 J.P. 678; 24 Digest 905, 51.

(s) Regulation 24, Defence (General) Regulations, 1939, S.R. and O., 1939, No. 927, as amended—Control of Noise (Defence) (No. 2) Order, 1939, S.R. and O., 1939, No. 1544; 32 Halsbury's Statutes 1381.

(t) 9 Halsbury's Statutes 206.

The expression "barbed wire" means any wire with spikes or jagged projections, and the expression "nuisance to a highway" as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway. The Barbed Wire Act is administered by county councils, borough councils, urban district councils, metropolitan borough councils, and any local authorities having control over highways(*u*). In rural districts, therefore, as a result of the Local Government Act, 1929(*x*), the Act of 1893, *supra*, is administered by county councils only. A person may recover damages for injury sustained as a result of a barbed wire fence, by an action at common law, where the fence is so constructed or placed as to be dangerous to the public(*a*).

(d) **Swimming pools.**—Section 233 of the Act of 1936, *infra*, enables a local authority to make byelaws with respect to privately owned swimming baths and bathing pools.

Section 233, Public Health Act, 1936.—Byelaws with respect to swimming baths and bathing pools not under the management of a local authority.

- (1) A local authority may make byelaws with respect to swimming baths and bathing pools, whether open or covered, which are not under their management for—
 - (a) securing the purity of the water therein;
 - (b) ensuring the adequacy and cleanliness of the accommodation thereat;
 - (c) regulating the conduct of persons resorting thereto; and
 - (d) the prevention of accidents:

Provided that this section shall not apply to any swimming bath or bathing pool which is not open to the public and for, or in connection with, the use of which no charge is made.

- (2) Byelaws made under this section may require the person responsible for any swimming bath or bathing pool to which the byelaws apply to keep a printed copy of the byelaws exhibited in a conspicuous place on the premises.

The view has been expressed by the Ministry of Health (*b*), that the nuisance provisions of the Act of 1936 (dealt with in the present chapter) are suitable for dealing with unsatisfactory swimming pools but this view has not been tested in the courts.

(e) **Noise nuisances.**—There is no general power conferred upon local authorities to deal with nuisances arising as a result

of noise, except in London(c), where "any excessive, unreasonable, or unnecessary noise which is injurious or dangerous to health" is a nuisance to be dealt with summarily under the Public Health (London) Act, 1936(d). Noise caused by local authorities or statutory undertakers is exempt, and in the case of industrial noise it is a good defence to show that the best practicable means of mitigating the noise has been employed. Somewhat similar powers have been conferred on a number of local authorities as a result of powers contained in private Acts(e).

County and county borough councils are empowered to make byelaws for the good rule and government of the whole or any part of their area and for the suppression of nuisances(f). Model byelaws relating to *wireless loudspeakers* provide that no person shall (i) in any street or public place or in connection with any shop, business premises or other place which adjoins any street or public place and to which the public are admitted, or (ii) upon any other premises by operating or causing or suffering to be operated any wireless loudspeaker, gramophone, amplifier or similar instrument, make or cause or suffer to be made any noise which is so loud and so continuous or repeated as to cause nuisance to occupants or inmates of any premises in the neighbourhood. No proceedings may be taken, however, under paragraph (ii) unless the nuisance is continued after one fortnight from the date of service on such person of a notice alleging the nuisance and signed by not less than three householders residing within the hearing of the instrument.

DANGEROUS OR DILAPIDATED BUILDINGS.

Section 58 of the Act of 1936, *infra*, enables a local authority to deal with dangerous or dilapidated buildings and the court may authorise the authority to do what is necessary to deal with the matter.

Section 58, Public Health Act, 1936.—Dangerous or dilapidated buildings or structures.

- (1) If it appears to a local authority that any building or structure, or part of a building or structure—
 - (a) is in such a condition, or is used to carry such loads, as to be dangerous to persons in the building or any adjoin-

(c) Sect. 66, London County Council (General Powers) Act, 1937; 30 Halsbury's Statutes 644.

(d) *Ibid.*, 437.

(e) E.g. Oxford Corporation Act, 1933, sect. 124.

(f) Sect. 249, Local Government Act, 1933; 26 Halsbury's Statutes 439.

ing building, or on the premises on which the building or structure stands or any adjoining premises ; or

(b) is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood, the authority may apply to a court of summary jurisdiction, and the court may—

(i) in the first mentioned case—

(a) where danger arises from the condition of the building or structure, make an order requiring the owner thereof to execute such work as may be necessary to obviate the danger or, if he so elects, to demolish the building or structure, or any dangerous part thereof, and remove any rubbish resulting from the demolition ;

(b) where danger arises from overloading of the building or structure, make an order restricting the use thereof until a court of summary jurisdiction, being satisfied that any necessary works have been executed, withdraws or modifies the restriction ;

(ii) in the second mentioned case, make an order requiring the owner of the building or structure to execute such works of repair or restoration or, if he so elects, to take such steps by demolishing the building or structure or any part thereof and removing any rubbish resulting from the demolition, as may be necessary for remedying the cause of complaint.

(2) If the person on whom an order is made under subsection (1) of this section for the execution of works, or the demolition of a building or structure or of any part of a building or structure, and the removal of any rubbish resulting from the demolition, fails to comply with the order within the time therein specified, the local authority may execute the order in such manner as they think fit and may recover the expenses reasonably incurred by them in so doing from the person in default, and without prejudice to the right of the authority to exercise those powers, he shall be liable to a fine not exceeding ten pounds.

(3) If a local authority are satisfied that any building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads, as to be dangerous to persons in the building or any adjoining building, or on the premises on which the building or structure stands or any adjoining premises, and that immediate action should be taken for the protection of those persons or any of them, the authority may shore up or fence off the building or structure, and may recover from the owner thereof the expenses of any action reasonably taken by them under this subsection.

An order made under section 58, *supra*, need not specify the particular works necessary to deal with the dangerous or dilapidated structure, because the owner has the alternatives of repairing or demolishing the building(g).

Prior to the passing of the Act of 1936, dilapidated buildings were dealt with in accordance with the powers contained in sections 75 to 78, Towns Improvement Clauses Act, 1847(*h*), which were incorporated with the Public Health Act, 1875(*i*). Although the provisions of the Act of 1847 are not repealed, dilapidated or dangerous buildings and structures which are not dangerous to passengers in the street but to persons in the building or any adjoining buildings, or on the premises, or which seriously affect the amenities of the neighbourhood, are now dealt with under section 58 of the Act of 1936, *supra*. Section 160(3) of the Public Health Act, 1875, is repealed *except* in so far as the provisions of the Act of 1847 incorporated thereby relate to buildings, walls and other structures dangerous to passengers in the street. Section 75 of the Act of 1847 defines the type of building, etc., to which the provisions apply, as any building or wall or anything affixed thereon within the district of the local authority deemed by the surveyor to be in a ruinous state and dangerous to passengers in the street. The surveyor must immediately cause a proper hoarding or fence to be put up for the protection of passengers, and may enter on land for that purpose(*k*). The erection of such a fence is not a condition precedent to the institution of legal proceedings(*l*). The surveyor must also give notice in writing, requiring that the building or wall shall forthwith be taken down, secured, or repaired, as the case may be. Such notice must be served on the owner, if known and resident within the area of the local authority, and on the occupier. If the requirements of the notice are not complied with within three days, the surveyor may make a complaint and the justices may then order the owner, or in his default the occupier, to carry out the works. In default of compliance with the order of the court, the local authority may do the work themselves. The costs incurred, both in the erection of the fence and of the subsequent works, must be borne by the owner(*m*).

EMERGENCY PROVISIONS RELATING TO NUISANCES.

Where a Secretary of State, the Admiralty, the Minister of Supply, or the Minister of Aircraft Production (known as a

(*h*) 13 Halsbury's Statutes 554 *et seq.*

(*i*) Sect. 160(3); 13 Halsbury's Statutes 691.

(*k*) Mellor v. Warden (1896), 40 Sol. Jo. 567; 38 Digest 189, 277.

(*l*) R. v. Tyrone JJ., [1928] N.I. 103; Digest Supp.

(*m*) Sect. 75, Towns Improvement Clauses Act, 1847; 13 Halsbury's Statutes 554.

"competent authority ") is satisfied that in the interests of the defence of the realm or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, it is necessary that any undertaking engaged or proposing to engage in essential work⁽ⁿ⁾ should be permitted to carry on such work notwithstanding any provision of any specified enactment^(o), the competent authority may, with the consent of the Minister of Health, by order suspend during the continuance in force of Defence Regulation 54AA^(p) or for such less period as may be specified in the order, the operation of that provision with respect to the carrying on of that work by that undertaking either unconditionally or subject to such conditions as may be specified in the order. During the operation of such an order legal proceedings cannot be taken by a local authority.

(n) "Essential work" means work appearing to a competent authority to be essential for the defence of the realm or the efficient prosecution of the war or to be essential to the life of the community—Defence (General) Regulations, 1939, No. 54AA (4); S.R. and O., 1940, No. 1032.

(o) Rivers Pollution Prevention Act, 1876; the Alkali, etc., Works Regulation Act, 1906; sect. 8 of the Salmon and Fresh Water Fisheries Act, 1923; Part III of the Public Health Act, 1936; sect. 82, Part IV, Part V, sect. 282(5) and the Fifth Schedule of the Public Health (London) Act, 1936; and any byelaw made under either of the two last mentioned Acts; *ibid.*

(p) Defence (General) Regulations, 1939, Regulation 54AA; S.R. and O., 1940, No. 1032.

CHAPTER 10.

OFFENSIVE TRADES.

The law relating to offensive trades is contained in sections 107 and 108 of Part III of the Act of 1936(a).

LOCAL AUTHORITIES WHO MAY CONTROL OFFENSIVE TRADES.

Section 107(1) of the Act of 1936, empowers the following local authorities to control scheduled offensive trades, *viz.* :—

- (1) county borough councils ;
- (2) borough councils ;
- (3) urban district councils ;
- (4) rural district councils (either as respects the whole of their area or a contributory place) where section 112 of the Public Health Act, 1875(b), was in force immediately before the date of operation of the Act of 1936 ; or where the Minister of Health invests the rural authority with urban powers, in accordance with section 13 of the Act of 1936 (see *ante*, p. 29).

In addition, any local authority has power to deal with an offensive trade under the nuisance sections (see chapter 9, *ante*, p. 216), where a case comes within either of the two definitions of statutory nuisances as under :—

- (a) any premises in such a state as to be prejudicial to health or a nuisance ;
- (b) any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood.

In rural districts where the special powers relating to offensive trades contained in the present chapter do not apply, the rural authority must rely entirely on the nuisance provisions for dealing with complaints regarding offensive trades.

Emergency provisions.—As to emergency provisions in operation during the war, see Defence (General) Regulations, 1939, Regulation, No. 54AA, *ante*, p. 249.

DEFINITION OF OFFENSIVE TRADE.

Section 107(1), *supra*, defines the term “ offensive trade ” as meaning—

- (i) the trade or business of a blood boiler,* blood drier,* bone boiler,* fat extractor,* fat melter,* fellmonger, glue maker,* gut scraper,* rag and bone dealer,* size maker,* soap boiler, tallow melter, tripe boiler ; or

(a) 29 Halsbury's Statutes 403.

(b) 13 Halsbury's Statutes 670.

(ii) any other trade, business or manufacture—

- (a) which, by virtue of an order made and confirmed under section 51 of the Public Health Acts Amendment Act, 1907(c), was immediately before the commencement of the Act of 1936, an offensive trade in a district to which section 107 applies; or
- (b) which the local authority, by order confirmed by the Minister of Health, and published in such manner as he may direct, have declared to be an offensive trade in such a district.

It should be noted that the trades marked with an * were not included in the list of offensive trades in the repealed section 112 of the Public Health Act, 1875, but such trades have commonly been added to the list of scheduled offensive trades in accordance with the procedure laid down in section 51 of the Public Health Acts Amendment Act, 1907, and the new Act makes them offensive trades in all districts to which section 107 *supra*, applies.

In any district where an order in force immediately before the commencement of the Act of 1936, declared that the trade of fish frying was an offensive trade, such order, in so far as it affects such trade, ceased to have effect on the 1st of October, 1940 (except for the purposes of any planning scheme—see *post*, p. 256), but without prejudice to the making of a new order under paragraph (ii) (b), *supra*.

It should be noted that in those areas where section 51, *supra*, was *not* in force at the time of the operation of the Act of 1936, the power of restricting the establishment of “any other noxious or offensive trade, business or manufacture,” contained in section 112 of the Act of 1875, ceases to have effect, and in future *in all districts* to which section 107 of the Act of 1936 applies, only those trades mentioned specifically in subsection (1) of that section, together with those trades added to the list by order of the local authority confirmed by the Minister of Health, will be restricted. This point is of importance, because under section 112, *supra*, cases were taken in respect of trades not specifically mentioned in that section. For instance, it was held that the business of brick-making was not of itself a noxious or offensive business(d). In another case(e), it was held similarly that the manufacture of manure was not a noxious and offensive trade. The business of a cowkeeper may be so conducted as not to be an offensive trade(f). The conviction by the justices

(c) 13 Halsbury's Statutes 930.

(d) *Wanstead L.B. v. Hill* (1863), 13 C.B. N.S. 479; 36 Digest 171, 131.

(e) *Cardell v. Newquay L.B.* (1875), 39 J.P. Jo. 742.

(f) *Manson v. Forrest* (1887), 14 Ct. of Sess. Cas. (4th Ser.) 802; 36 Digest 169, h.

in respect of the establishment of a rag and bone dealer's business, was upheld on appeal(g), but note that this trade is now included in the list of trades scheduled in section 107(1), *supra*. It was held that a fried-fish shop was not necessarily an offensive trade(h), although successful action was taken in another case(i) under the repealed section 114 of the Public Health Act, 1875(k), now incorporated in section 92 of the Act of 1936 (see *ante*, p. 219). A small-pox hospital was held not to be a noxious or offensive trade(l).

The Minister of Health (or the Local Government Board) has from time to time declared the following to be offensive trades in one or more areas on the application of the local authorities concerned: blood-albumen maker, bone burner, bone steamer, dealer in blood or other putrescible animal products, dealer in hides, skins and fats, fish skin dresser, fish curer (not carried out by a fishmonger, as subsidiary to his trade or business as a fishmonger), fish-oil manufacturer, manure manufacturer when trade not carried on at chemical manure works within the meaning of the Alkali, etc., Works Regulation Act, 1906, animal charcoal manufacturer, candle maker, manufacturer of poultry meals comprising fish refuse, parchment maker, chitterling boiler, and skin-drier.

Subsection (5) of section 107 of the Act of 1936(m), enables a local authority to declare a trade, business or manufacture to be an offensive trade if established or carried on in a specified part of their district only.

RESTRICTION UPON THE ESTABLISHMENT OF OFFENSIVE TRADES.

In accordance with section 107(1), *supra*, any person who establishes an offensive trade (as defined therein), within the district of a local authority (also defined in that section—see *ante*, p. 251), without the consent of that authority, is liable to a fine of fifty pounds.

The effect of this restriction is to prohibit absolutely the establishment of a scheduled offensive trade without the prior consent of the local authority being obtained. This applies whether the trade is carried on so as to be a nuisance or not, and is designed so that the local authority may either pro-

(g) *Passey v. Oxford L.B.* (1879), 43 J.P. 622; Digest Supp.

(h) *Braintree L.B. v. Boyton* (1885), 48 J.P. 582; 36 Digest 171, 133.

(i) *Houldershaw v. Martin* (1885), 49 J.P. 179.

(k) 13 Halsbury's Statutes 671.

(l) *Withington L.B. v. Manchester Corpn.* (1893), 2 Ch. 19; 36 Digest 175,

hibit the establishment of the trade if they consider it desirable to do so, or provide for the proper regulation of the trade when established. After the trade has been established with the consent of the local authority, the ordinary procedure may be followed if nuisance arises or contraventions of the law occur.

Subsection (6) of section 107 of the Act of 1936, defines what is meant by the establishment of an offensive trade, and it is important to note that a change of ownership or occupation, or a complete rebuilding without extension of the floor space, does not constitute the establishment of a new trade, whereas a transfer to new premises, an enlargement of existing premises, or the re-establishment of the trade after a lapse of more than eighteen months, do constitute the establishment of a new trade.

Section 107, Public Health Act, 1936.—Restriction on establishment of offensive trade in urban district.

.....
 (6) For the purposes of this section, a trade, business or manufacture shall be deemed to be established not only when it is established in the first instance, but also if and when—

- (a) it is transferred or extended from the premises on which it is for the time being carried on to other premises ; or
- (b) it is resumed on any premises on which it was previously carried on, after it has been discontinued for more than eighteen months ; or
- (c) the buildings in which it is carried on are enlarged,

but a change in the ownership or occupation of the premises on which a trade, business or manufacture is carried on, or the rebuilding of the buildings in which it is carried on when they have been wholly or partially pulled down or burnt down, without any extension of the total floor space therein, shall not for those purposes be deemed to be an establishment of the trade, business or manufacture.

With regard to the establishment of an offensive trade, it was held in a case where the trade of dealers in raw hides and skins was established prior to the declaration by the local authority of that trade as an offensive trade under section 51 of the Public Health Acts Amendment Act, 1907(*n*), that the firm were not liable to a penalty as the establishment of the business was not unlawful at the date it was established(*o*).

Section 107(3) of the Act of 1936, *infra*, enables a local authority, in giving their consent to the establishment of an offensive trade, to do so for a limited period, specified in the

consent, subject to extension from time to time as they think fit.

Section 107, Public Health Act, 1936.—Restriction on establishment of offensive trade in urban district.

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- (3) Any consent of a local authority under this section to the establishment of an offensive trade may be given so as to authorise the carrying on of the trade for a limited period specified in the consent, and for such extension of that period as may from time to time be granted by the authority, and any person carrying on the trade after the expiration of the period so specified, or any such extension thereof, as the case may be, shall be liable to a fine not exceeding five pounds for each day on which he carries on the trade after notice from the local authority stating that the period, or, as the case may be, the period as extended, has expired.
-

It is the usual practice to grant consents of this kind for a period of twelve months, and to renew them from year to year, subject to the conduct of the business being satisfactory. This is an extremely useful provision for securing the maintenance of a proper standard of business and enables necessary work to be carried out. The threat of the withdrawal of consent is usually sufficient to secure the execution of the work required by the local authority.

PENALTY UPON CONTINUING TO CARRY ON OFFENSIVE TRADE.

Where a person carries on an offensive trade without the previous consent of the local authority, and he is convicted in respect of the establishment thereof, or he receives notice from the local authority to discontinue the trade, a daily penalty is imposed by subsection (2) of section 107, *infra*.

Section 107, Public Health Act, 1936.—Restriction on establishment of offensive trade in urban district.

.....

- (2) Any person who on any premises within a borough or urban district, or such a rural district or contributory place as aforesaid, carries on an offensive trade established without such consent, if any, as at the date of the establishment of the trade was required by subsection (1) of this section or by any corresponding enactment repealed by this Act or the Public Health Act, 1875, shall be liable to a fine not exceeding five pounds for every day on which he carries on the trade after having been convicted in respect of the establishment thereof or, where he has not been so convicted, after receiving notice from the local authority to discontinue the trade.
-

APPEAL AGAINST DECISION OF LOCAL AUTHORITY.

Subsection (4) of section 107 of the Act of 1936^(p), enables a person who is aggrieved by the decision of a local authority, either with regard to the establishment of an offensive trade, or the limitation of time or refusal to extend such time, to appeal to a court.

Section 300 of the Act of 1936 (see *ante*, p. 67), provides that such an appeal must be by way of complaint for an order and the Summary Jurisdiction Acts apply. The appeal must be brought within twenty-one days from the date of the notice of the decision of the local authority, and the right of appeal must be stated on the notice. Subject to the provisions of section 301 of the Act of 1936 (see *ante*, p. 68), an aggrieved person has the right of appeal to quarter sessions against the decision of the court of summary jurisdiction.

OFFENSIVE TRADES AND THE TOWN AND COUNTRY PLANNING ACT.

Under the Town and Country Planning Act, 1932^(q), a local authority are empowered to prepare a planning scheme, which when brought into operation enables the authority to exercise control over the planning and development of the land subject to such scheme. The Ministry of Health have issued a series of model clauses for use in the preparation of planning schemes^(r), and these include a reference to special industrial buildings, including offensive trades.

Generally speaking, these special industrial buildings may only be established with the consent of the local authority and in areas specially zoned for that class of building. Elsewhere, they may be prohibited altogether, or permitted by special consent of the local authority.

Clause 28 and the Third Schedule defines special industrial buildings as follows :—

- (1) Any building designed for use as a works which is registrable under the Alkali, etc., Works Regulation Act, 1906, or any statute amending or repealing that Act.
- (2) Any building designed for use as or for one or more of the following works or processes in so far as any such work or process is not registrable under the Alkali, etc., Works Regulation Act, 1906, or any statute amending or repealing that Act, *viz.* :—

^(p) 29 Halsbury's Statutes 404.

^(q) Sect. 6; 25 Halsbury's Statutes 475.

^(r) Ministry of Health, Town and Country Planning, Model Clauses for use in the Preparation of Schemes; February, 1937.

Brick kilns, lime kilns, coke ovens, salt glazing works, sintering of sulphur bearing materials;
 Smelting of ores and minerals, calcining, puddling and rolling of iron and other metals, conversion of pig iron into wrought iron, re-heating, annealing, hardening, forging, converting and carburising iron and other metals;
 Works for the production of, or which employ cellulose lacquers, cyanogen or its compounds, hot pitch or bitumen, pulverised fuel, pyridine, liquid or gaseous sulphur dioxide, sulphur chlorides;
 Works for the production of amyl acetate, aromatic esters, butyric acid, caramel, enamelled wire, glass, hexamine, iodoform, lampblack, B-naphthol, resin products other than synthetic resin powders, salicylic acid, sulphonated organic compounds, ultramarine, zinc chloride, zinc oxide.

(3) Any building designed for the purpose of carrying on any of the following industries, businesses or trades, *viz.* :—

Animal charcoal manufacturer.	to his trade or business as a fishmonger).
Blood albumen maker.	
Blood boiler.	Fish frier.
Blood drier.	Fish oil manufacturer.
Bone boiler or steamer.	Fish skin dresser.
Bone burner.	Glue maker.
Bone grinder.	Gut scraper or gut cleaner.
Candle maker.	Leather dresser.
Chitterling boiler (not carried on as subsidiary to a retail trade or business).	Maker of meal for feeding poultry, dogs, cattle, or other animals from any fish, blood, bone, fat or animal offal, either in an offensive condition or subjected to any process causing noxious or injurious effluvia.
Dealer in blood, skins, hides or butchers' waste.	Manufacturer of manure from fish, fish offal, blood or other putrescible animal matter.
Dealer in rags and/or bones (including receiving, storing, sorting or manipulating rags in or likely to become in an offensive condition, or any bones, rabbit skins, fat, or putrescible animal products of a like nature).	Parchment maker.
Fat melter or fat extractor.	Size maker.
Fellmonger.	Skin drier.
Fish curer (not carried on by a fishmonger as subsidiary	Soap boiler.
	Tallow melter.
	Tanner.
	Tripe boiler.

So far as fish-frying^(rr) and tripe boiling are concerned it is noted that as these trades aim at the supply of cheap food it is important to avoid undue interference. Accordingly it may be possible in the planning scheme to make special provision for their entry, subject to the consent of the local authority, into shopping areas and even into residential areas.

If Clause 33, *infra*, of the Model Series is included in the planning scheme adopted by the local authority, it will be seen that the provisions of the Public Health Act relating to offensive trades are suspended and the control of such trades will be effected under the planning scheme and not under the Act of 1936.

^(rr) As to registration of fish-frying premises, see sect. 14, Food & Drugs Act, 1938; 31 Halsbury's Statutes 249.

Town and Country Planning Act, 1932.—Model Clauses of the Ministry of Health—Model Clause 33, Offensive Trades.

The provisions of this part of the scheme with regard to consent to the erection and use of buildings for trade or industry and appeals in connection therewith shall be in substitution for the provisions of section 107 of the Public Health Act, 1936, and the operation of these provisions is hereby suspended so far as is necessary for the purpose of this clause.

BYELAWS RELATING TO OFFENSIVE TRADES.

Section 108 of the Act of 1936, *infra*, enables any urban authority to make byelaws controlling offensive trades.

Section 108, Public Health Act, 1936.—Byelaws as to certain trades in urban district.

- (1) Every urban authority may, and if required by the Minister shall, make byelaws with respect to the trade or business of fish frying carried on on or in any premises or streets within their district, in order to prevent any noxious or injurious effects of the trade or business.
- (2) Without prejudice to the provisions of the preceding subsection, an urban authority, in order to prevent or diminish any noxious or injurious effects of the trade, business or manufacture in question, may make byelaws—
 - (a) with respect to any trade, business or manufacture being a trade, business or manufacture which as respects their district or any part thereof is an offensive trade within the meaning of the last preceding section, established on premises within their district, or, as the case may be, that part thereof, either with or without their consent and either before or after the commencement of this Act;
 - (b) with respect to any trade or business carried on in streets within their district, or any part thereof, being a trade or business, which as respects their district, or, as the case may be, that part thereof, is an offensive trade within the meaning of the last preceding section.
- (3) If immediately before the commencement of this Act section one hundred and thirteen of the Public Health Act, 1875, was in force in, or in any contributory place in, the district of a rural authority, the foregoing provisions of this section shall apply to that authority as regards their district, or, as the case may be, as regards that contributory place.
- (4) Subject as hereinafter provided—
 - (a) any byelaw made by a local authority under this section shall cease to have effect on the expiration of ten years from the date on which it was made;
 - (b) any byelaw with respect to an offensive trade made by a local authority under the corresponding provisions of any enactment repealed by this Act, or of any such enactment as amended or extended by a local Act, shall cease to have effect on the expiration of three years from the passing of this Act:

Provided that the Minister may by order extend the period during which any byelaw mentioned in this subsection is to remain in force.

- (5) A local authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

It will be observed that a rural authority can only adopt byelaws under the above section, if section 113 of the Public Health Act, 1875(s), was in force on the 1st of October, 1936, but a rural district may be invested with urban powers in accordance with section 13 of the Act of 1936 (see *ante*, p. 29).

Subsection (2) enables byelaws to be made controlling trades and businesses which are carried on in travelling vans, and subsection (1) enables byelaws to be made with respect to fish frying, either in premises or in travelling vans. It should be noted that although the trade of a fish fryer is not a scheduled offensive trade, byelaws may be made regulating it. In recent years, the Minister of Health has shown an increasing reluctance to agree to the addition of this trade to the list of offensive trades under the repealed section 112 of the Act of 1875(t), with the result that few towns have been able to add it to the list in recent years. Undoubtedly considerable improvements have been effected in the conduct of fried fish shops and many of the unsatisfactory methods of the past have been eliminated. At the same time, it is a trade which may be extremely offensive and objectionable unless carried on in a proper manner, the nature of the products used readily lending themselves to the creation of nuisance unless proper care is exercised. For this reason, the power of controlling the trade by means of byelaws has been introduced into section 108, *ante*, p. 258. It should be remembered in this connection with under a town planning scheme, it may be possible to prohibit the use of a building as a fish frying establishment (see *ante*, p. 256).

The Ministry of Health have issued a Model Series(u) of byelaws relating to offensive trades, of which the following is a summary of the more important provisions.

Summary of Model Byelaws of the Ministry of Health relating to Offensive Trades.

BLOOD-BOILER AND BLOOD-DRIER

- 1—Blood to be stored in such a manner as to avoid nuisance ;
- 2—Floors, vessels and utensils used to be thoroughly cleansed at the end of each working day ;

- 3—All internal surfaces to be kept in good order and repair so as to prevent absorption of any liquid, filth or refuse ;
- 4—Adequate steps to be taken to prevent the escape of noxious vapours.

BONE BOILER

- 1—All bones to be stored in such a manner as to avoid nuisance ;
- 2—All grease, refuse or filth to be removed from the floors at the end of each working day ;
- 3—All internal surfaces to be kept in good order and repair so as to prevent absorption of any liquid, filth or refuse ;
- 4—Adequate steps to be taken to prevent the escape of noxious vapours ;
- 5—Liquid refuse to be cooled before discharging into any drain.

FELLMONGER AND LEATHER-DRESSER

- 1—Skins or hides, which have become useless for leather dressing on account of decomposition, not to be kept on the premises ;
- 2—Floor or pavement of premises to be kept clean and to be swept as often as necessary ;
- 3—All fleshings or refuse fragments of skin or other matter detached from any hide or skin to be kept in a suitable position and forthwith removed from the premises ;
- 4—Water in tanks used for cleansing or soaking skins, to be renewed as often as may be necessary to prevent emission of noxious or injurious effluvia ;
- 5—Tanks to be emptied and cleansed, and the filth removed therefrom, to be taken off the premises immediately ;
- 6—Implements and other apparatus used on the premises to be kept clean ;
- 7—All filth which has splashed on to any internal surface to be removed by scraping or by some other effectual means of cleansing at least twice a year, in March and September ;
- 8—All internal surfaces to be kept in good repair ;
- 9—The interior of every tub or other vessel or receptacle used for holding " puer " to be thoroughly cleansed as often as necessary to prevent the accumulation of filth therein.

TANNER

- 1—Skins or hides, which have become useless for tanning on account of decomposition, not to be kept on the premises ;
- 2—Floor or pavement of premises to be kept clean and to be swept as often as necessary ;
- 3—All fleshings or refuse fragments of skin or other matter detached from any hide to be kept in a suitable position and forthwith removed from the premises ;
- 4—Water in tanks used for washing or soaking hides or skins, to be renewed as often as necessary to prevent emission of noxious or injurious effluvia ;
- 5—Tanks to be emptied and cleansed, and the filth removed therefrom, to be taken off the premises immediately ;
- 6—Waste lime from any pit to be removed ;
- 7—All filth which has splashed on to any internal surface to be removed by scraping or by some other effectual means of cleansing at least twice a year, in March and September ;
- 8—All internal surfaces to be kept in good repair ;
- 9—Interior of every tub or other vessel or receptacle used for holding " puer " to be thoroughly cleansed as often as necessary to prevent the accumulation of filth therein.

SOAP-BOILER

- 1—All materials to be stored on the premises so as to prevent emission of noxious or injurious effluvia ;
- 2—All internal surfaces to be kept in good repair ;
- 3—Adequate steps to be taken to render innocuous all vapours emitted during the process of melting or boiling any materials on the premises.

TALLOW-MELTER AND FAT-MELTER OR FAT-EXTRACTOR

- 1—All materials on the premises to be kept so as to prevent the emission of noxious or injurious effluvia ;
- 2—Floors and pavements to be cleansed at the end of each working day ;
- 3—All internal surfaces above the floor to be cleansed and limewashed twice a year, in March and September ;
- 4—All internal surfaces to be kept in good repair ;
- 5—Adequate steps to be taken to render innocuous all vapours emitted during the various processes.

TRIPE-BOILER

- 1—Floors and pavements to be thoroughly washed at the end of each working day ;
- 2—Every bench, table, vessel, receptacle or instrument used on the premises to be thoroughly washed at the end of each working day ;
- 3—All filth which has splashed upon any internal surface of the walls to be removed by washing or other suitable means at the end of each working day ;
- 4—All internal surfaces above the floor to be cleansed and limewashed four times yearly, in March, June, September and December ;
- 5—Properly covered receptacles to be provided for the storage of manure, garbage, inedible offal, filth or refuse ;
- 6—All refuse receptacles to be removed from the premises and emptied at the end of each working day ;
- 7—All internal surfaces to be kept in good repair ;
- 8—Effectual steps to be taken to render innocuous all gases or vapours given off during the process of boiling ;
- 9—Liquid refuse to be cooled before discharging into any drain.

GLUE-MAKER AND SIZE-MAKER

- 1—Materials which have become useless, by reason of decomposition, for glue- or size-making, to be removed from the premises ;
- 2—Moist materials brought on to the premises for the purpose of the trade to be stored so as to prevent emission of noxious effluvia, or to be dried or to be subjected to the action of milk of lime if it is impracticable to dry the materials ;
- 3—All scutch, residue or refuse to be deposited in a suitable chamber or shed, in such a manner as to prevent the emission of noxious effluvia, and to be removed therefrom within forty-eight hours ;
- 4—At the close of every working day, to cleanse the floors and pavements, and to collect waste scraps of glue or size and place them in suitable receptacles ;
- 5—Floor or pavement of the drying and packing rooms to be thoroughly washed once at least in each week ;
- 6—Boiling pans, tanks, vats, troughs and other receptacles to be thoroughly cleansed from time to time as required ;
- 7—All waste lime to be placed in properly constructed receptacles, covered in such a manner as to prevent the emission of noxious effluvia, and removed from the premises ;
- 8—Floor or pavement to be kept in good repair ;
- 9—All internal surfaces above the floor to be limewashed each year in March ;
- 10—Effectual steps to be taken to render innocuous all gas and vapour emitted during the boiling processes.

GUT-SCRAPER.

- 1—All undried guts to be kept in suitable receptacles constructed of non-absorbent material, and furnished with tightly fitting covers ;
- 2—At frequent intervals during the working day to keep the floor of the premises sprinkled or washed with an effective deodorant powder or solution ;
- 3—All refuse and fragments of gut, etc., to be kept in proper receptacles, which must be removed from the premises as quickly as possible ;

- 4—At the close of each working day cleanse the floor of the premises, cleanse every bench, table, tub, vessel, receptacle or implement used in the business, and remove any material splashed upon any of the internal surfaces ;
- 5—Limewash the internal surfaces above the floor four times each year, in March, June, September and December ;
- 6—All internal surfaces to be kept in good repair.

RAG AND BONE DEALER.

- 1—Rags, bones, skins, fat or other putrescible matter not to be kept in any premises, part of which is used as a living or sleeping room, or in any ware-house, etc., which is not properly ventilated ;
- 2—All internal surfaces above the floor to be limewashed twice each year in April and October ;
- 3—All bones, fat and other putrescible matter to be kept in suitable metal, covered receptacles, which must be removed from the premises at frequent intervals ;
- 4—All internal surfaces to be kept in good repair.

FISH-FRIER.

- 1—Vessels containing wet fish to be thoroughly cleansed at least once in every twenty-four hours ;
- 2—A sufficient number of impervious receptacles, provided with tightly fitting covers, to be kept for the storage of waste fish, etc. ;
- 3—All such waste fish, etc., to be kept in the receptacles ;
- 4—All such waste fish, etc., to be removed every twenty-four hours ;
- 5—All internal surfaces to be kept in good repair ;
- 6—Floor of building and all apparatus, utensils and appliances to be kept thoroughly clean ;
- 7—Room used for the frying of fish to be adequately ventilated ;
- 8—Every cooking stove to be provided with side screens and a suitable hood of impervious material, the hood to be connected to a flue, or every pan in such stove to be completely covered with a suitable cover connected to a flue ;
- 9—Effectual means to be taken to render innocuous all gases and vapours produced during the frying of the fish.

ALKALI WORKS.

Certain noxious or offensive trades are controlled by the Alkali, etc., Works Regulation Act, 1906(*a*). The Act is administered directly by the Ministry of Health, and special inspectors are employed for the purpose. Local authorities have certain powers, however, which enable them to make representations and complaints to the Minister.

Definition of Alkali, etc., Works.—The provisions of the Act are not confined strictly to alkali works, but to many other chemical processes. The expression “alkali work” means every work for—

- (a) the manufacture of sulphate of soda or sulphate of potash ; or
- (b) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed,

in which muriatic acid gas is evolved(*b*).

(a) 13 Halsbury's Statutes 894.

(b) Sect. 27(1), Alkali, etc., Works Regulation Act, 1906 ; 13 Halsbury's Statutes 904.

The expression "noxious or offensive" gas includes the following gases and fumes:—

Muriatic acid ;	Fumes from tar works(c) ;
Sulphuric acid ;	Sulphuric anhydride ;
Sulphurous acid, except that arising solely from the combustion of coal ;	Sulphurous anhydride (except that arising solely from the combustion of coal) ;
Nitric acid and acid-forming oxides of nitrogen ;	Bromine and its acid compounds ;
Sulphuretted hydrogen ;	Iodine and its acid compounds ;
Chlorine, and its acid compounds ;	Arsenic and its compounds ;
Fluorine compounds ;	Ammonia ;
Cyanogen compounds ;	Pyridine ;
Bisulphide of carbon ;	Fumes from benzene works ;
Chloride of sulphur ;	Fumes from paraffin oil works(d) ;
Fumes from cement works ;	Fumes containing silicon, calcium or their compounds ;
Fumes containing copper, lead, antimony, arsenic, zinc, or their compounds ;	Fumes from paraffin oil works containing any sulphur compound(e) ;
	Cadmium and its compounds(f).

A "scheduled work" under the Act means, subject to various qualifications, any of the following:—

Sulphuric acid works ;	Nitric acid works ;
Chemical manure works ;	Sulphate and muriate of ammonia works ;
Gas liquor works ;	Bisulphide of carbon works ;
Chlorine works ;	Sulphocyanide works ;
Muriatic acid works, including certain tin plate works and salt works ;	Picric acid works ;
Sulphide works or any works in which sulphuretted hydrogen is evolved as part of a chemical process(g) ;	Paraffin oil works ;
Alkali waste works ;	Bisulphite works ;
Venetian red works ;	Tar works ;
Lead deposit works ;	Cement production works(g) ;
Arsenic works ;	Zinc works (h) ;
Nitrate and chloride of iron works ;	Benzene works ;
	Pyridine works ;
	Bromine works ;
	Hydrofluoric acid works ;
	Crude petroleum refineries (i) ;
	Lead works (h) ;

Registration of works.—Every (1) alkali works, (2) cement works, (3) smelting works, and (4) scheduled works (see

(c) Sect. 27(1) Alkali, etc.. Works Regulation Act, 1906 ; 13 Halsbury's Statutes 904.

(d) The last nine items were added by the Alkali, etc., Works Order, 1928, S.R. and O., 1928, No. 26 ; 13 Halsbury's Statutes 907.

(e) The last two items were added by the Alkali, etc., Works Order, 1935, S.R. and O., 1935, No. 162, Sched. 1.

(f) Added by the Alkali, etc., Works Order, 1939, S.R. and O., 1939, No. 1299, Sched. 1.

(g) Added by the Alkali, etc., Works Order, 1935, S.R. and O., 1935, No. 152, Sched. 2.

(h) Sched. I, Alkali, etc., Works Regulation Act, 1906 ; 13 Halsbury's Statutes 906.

(i) The last five items were added by the Alkali, etc., Works Order, 1928, S.R. and O., 1928, No. 26 ; 13 Halsbury's Statutes 907.

(k) Added by the Alkali etc., Works Order, 1939, S.R. and O., 1939, No. 1299, Sched. 2.

supra), must be registered with the Ministry of Health, who must issue a certificate of registration. The registration is renewable annually(*l*).

Prevention of discharge of noxious and offensive gases.—The Act provides that proper steps must be taken to prevent atmospheric pollution and for that purpose the works must be carried on so as to avoid the discharge of noxious fumes and gases, as far as it is reasonably possible to do so. For instance, at alkali works, in one cubic foot of air, smoke or chimney gases, escaping from the works to the atmosphere, there must not be more than one-fifth part of a grain of muriatic acid(*m*).

Every work in which any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen from alkali waste or drainage therefrom, is produced or used, must be carried on in such manner that the liquid does not come into contact with the alkali waste or drainage so as to cause a nuisance(*n*). The owner of such works may request the local sanitary authority to provide and maintain, *at his expense*, a drain or channel for carrying off the liquid to the sea or into any river or watercourse, provided no contravention of the Rivers Pollution Prevention Act, 1876(*o*), occurs, and the sanitary authority have the like powers for providing such a drain, as they have under the Public Health Act(*p*) for providing sewers, either within or without their district(*q*). Where any damage occurs as a result of the exercise by a sanitary authority of the above powers, full compensation must be paid to the aggrieved party, the expenses being recovered by the local authority from the owner of the works(*r*).

Lead poisoning.—Apart from the Alkali, etc., Works Regulation Act, the Factories Act, 1937(*s*), contains provisions designed to protect women and young persons from dangers arising in industrial processes connected with lead manufacture or involving the use of lead compounds. The dangers arising from the use of lead paint are dealt with in another Act(*t*). Both these enactments, however, like others dealing with dangers

(*l*) Alkali, etc., Works Regulation Act, 1906, sect. 9; 13 Halsbury's Statutes 898.

(*m*) *Ibid.*, sect. 1; 13 Halsbury's Statutes 894.

(*n*) *Ibid.*, sect. 3(1); 13 Halsbury's Statutes 895.

(*o*) 20 Halsbury's Statutes 316; and see chapter 12, *post*, p. 282.

(*p*) See sects. 15 and 16, Public Health Act, 1936, *ante*, p. 97.

(*q*) Sect. 3(3), Alkali, etc., Works Regulation Act, 1906; 13 Halsbury's Statutes 895.

(*r*) *Ibid.*, sect. 3(4); 13 Halsbury's Statutes 895.

(*s*) Sects. 58 and 59, Factories Act, 1937; 30 Halsbury's Statutes 243.

to industrial workers, are enforceable by the Factory Inspectors of the Ministry of Labour and National Service and not by local authorities.

Powers of local sanitary authorities.—Section 22 of the Act of 1906, *infra*, enables a sanitary authority, upon information given by any of their officers, or any ten residents of the district, to complain to the Minister of Health that there has been a contravention of the Act at works within or without their district.

Section 22, Alkali, etc., Works Regulation Act, 1906.—Complaint by sanitary authority in cases of nuisances.

- (1) Where complaint is made to the central authority by any sanitary authority, on information given by any of their officers, or any ten inhabitants of their district, that any works to which this Act applies is carried on (either within or without the district) in contravention of this Act, or that any alkali waste is deposited or discharged (either within or without the district) in contravention of this Act, and that a nuisance is occasioned thereby to any of the inhabitants of their district, the central authority shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think fit and just.
- (2) The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry.

A local authority may apply to the Minister of Health for the appointment of an additional inspector under the Act and if they undertake to pay a proportion of his salary being not less than one-half, the Minister may make the additional appointment, subject to the consent of the Treasury^(u).

It is unlikely that the sanitary officer will have much to do with regard to works coming within the sphere of the Act of 1906, and if complaints are received regarding works of this kind, the matter should be referred to the inspector appointed under the Act. Only under most exceptional circumstances would it be necessary to report formally to the local authority that a contravention of the Act existed, as co-operation with the Ministry's inspector will usually bring about the desired end.

Emergency provisions.—As to emergency provisions in operation during the war, see Defence (General) Regulations, 1939, Regulation No. 54AA, *ante*, p. 249. The provisions of section 86, *supra*, are also relaxed during the emergency so far as registration is concerned but extended so far as they relate to inspection^(x).

^(u) Sect. 14, Alkali, etc., Works Regulation Act, 1906; 13 Halsbury's Statutes 900.

MARINE STORE DEALERS.

In districts where Part VII of the Public Health Acts Amendment Act, 1907(y), is in force(z), section 86, *post*, p. 943, requires all persons carrying on the business of a dealer in old metal or as a marine store dealer, to be registered with the local authority.

Section 86, Public Health Acts Amendment Act, 1907.—As to dealers in old metal and marine stores.

- (1) Every person who shall carry on business as a dealer in old metal or as a marine store dealer shall register his name and place of abode and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority.
- (2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired.
- (3) Every person who shall carry on any such business without having so registered or without keeping such book and making such entries as required by this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.
- (4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person so authorised in the execution of his duty under this subsection shall be liable to a penalty not exceeding five pounds.
- (5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district and by handbills and otherwise in such manner as they think sufficient.

Section 154 of the Act of 1936, *infra*, prohibits the sale or exchange of toys by a rag and bone dealer but it should be observed that such restriction only applies in the case of children under the age of fourteen years, provided that articles of food or drink may not be sold or delivered to any person irrespective of age.

(y) 13 Halsbury's Statutes 940.

(z) As to adoption of Act, see sect. 3; 13 Halsbury's Statutes 911.

Section 154, Public Health Act, 1936.—Restrictions on sales, etc., by persons collecting, or dealing in, rags, old clothes or similar articles.

- (1) No person who collects or deals in rags, old clothes or similar articles, and no person assisting, or acting on behalf of, any such person as aforesaid, shall—
 - (a) in or from any shop or premises used for, or in connection with, the business of a dealer in any such articles as aforesaid ; or
 - (b) while engaged in collecting any such articles as aforesaid, sell or deliver, whether gratuitously or not, any article of food or drink to any person, or any article whatsoever to a person under the age of fourteen years.
- (2) A person who contravenes any of the provisions of this section shall be liable to a fine not exceeding five pounds.

CHAPTER 11.

SMOKE NUISANCES.

DEFINITION OF SMOKE NUISANCES.

Section 101 of the Act of 1936, *infra*, defines as "statutory nuisances" (see *ante*, p. 219), the following conditions, which are referred to as "smoke nuisances."

Section 101, Public Health Act, 1936.—Smoke nuisances.

For the purposes of this Part of this Act—

- (a) any installation for the combustion of fuel which is used in any manufacturing or trade process, or for working engines by steam, and which does not so far as practicable prevent the emission of smoke to the atmosphere; and
 - (b) any chimney (not being the chimney of a private house) emitting smoke in such quantity as to be a nuisance,
- shall be statutory nuisances and are in this Act referred to as "smoke nuisances."

Section 110 of the Act of 1936(*a*), defines the term "smoke" as including soot, ash, grit and gritty particles, and the term "chimney" as including structures and openings of any kind from or through which smoke may be emitted.

(a) **Failure to prevent the emission of smoke to the atmosphere.**—It will be observed that as compared to section 91(7) of the Public Health Act, 1875(*b*), the language in paragraph (a) of section 101, *supra*, is altered somewhat, although the general effect of the section appears to be the same.

Subsection (2) of section 103 of the Act of 1936, *infra*, provides that it shall be a good defence in any proceedings for an offence under paragraph (a) of section 101, *supra*, to prove that the installation complained of embodies the best practicable means of preventing smoke and that it has been properly attended to.

Section 103, Public Health Act, 1936.—Procedure with respect to smoke nuisances.

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- (2) Where proceedings are brought by virtue of this section in respect of such a nuisance as is mentioned in paragraph (a) of the last but one preceding section, it shall be a defence for the defendant to prove that the installation complained of

embodies the best practicable means for preventing the emission of smoke to the atmosphere, and that the installation has been carefully attended to by the person having the charge thereof.

In determining whether the best practicable means have been taken for preventing or for counteracting the effect of a smoke nuisance, the court must have regard to cost and to local conditions and circumstances(*c*).

Under somewhat similar provisions in the Public Health (Scotland) Act, 1867, it was held that the section was designed to deal with a badly constructed furnace or one continually misused, and not a furnace which on isolated occasions failed to consume its own smoke(*d*). In a further case(*e*), it was held that an absence of smoke prevention devices such as mechanical or under feed stokers was not evidence in itself of a nuisance within the meaning of section 16(9) of the Public Health (Scotland) Act, 1897. In a case under a local improvement Act, which provided for an offence being committed by the owner or occupier, or by a foreman or workman in charge of the plant, it was held that where a servant negligently used the furnaces so that the smoke was not consumed, without the knowledge of the owner, the servant only could be convicted and not the owner(*f*). A similar decision was given in a case(*g*) taken under the Smoke Nuisance (Metropolis) Act, a local improvement Act, with a proviso that no offence was committed if the furnace consumed "as far as possible" its own smoke, it was held that those words meant as far as was possible consistent with carrying out the trade in which the furnace was employed(*h*).

(b) **Any chimney emitting smoke in such quantity as to be a nuisance.**—It should be noted that the expression "house" means a dwelling-house(*i*), so that this provision applies to a chimney (defined in section 110 of the Act of 1936, *supra*), connected with any class of building other than a dwelling-house.

Where proceedings are taken for an offence under this clause in respect of the emission of smoke, *other than black smoke*, it is a good defence to prove, in accordance with subsection (3) of section 103, *infra*, that the best practicable means have been taken to prevent the nuisance, but this

(*c*) Sect. 110(2), Public Health Act, 1936; 29 Halsbury's Statutes 406.

(*d*) *Dumfries Commissioners v. Murphy* (1884), 11 Ct. of Sess. Cas. (4th Ser.) 694; 36 Digest 184, *e*.

(*e*) *Leith J.J. v. Jas. Bertram and Son*, [1915] S.C. 1133; 36 Digest 184 *f*.

(*f*) *Willcocks v. Sands* (1868), 32 J.P. 565; 36 Digest 183, 275.

(*g*) *Chisholm v. Doulton* (1889), 22 Q.B.D. 736; 36 Digest 183, 277.

(*h*) *Cooper v. Woolley* (1867), L.R. 2 Ex. 88; 36 Digest 184, 281.

(*i*) Sect. 343, Public Health Act, 1936; 28 Halsbury's Statutes 537.

defence does not hold good where the offence is the emission of *black* smoke in such a quantity as to be a nuisance^(k).

Section 103, Public Health Act, 1936.—Procedure with respect to smoke nuisances.

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- (3) Where proceedings are brought by virtue of this section in respect of the emission from a chimney of smoke, other than black smoke, in such quantity as to be a nuisance, it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing the nuisance.

For the purposes of this subsection, the expression "best practicable means" has reference not only to the provision and efficient maintenance of adequate and proper plant for preventing the creation and emission of smoke, but also to the manner in which that plant is used.

Where byelaws have been made under section 104 of the Act of 1936 (see *post*, p. 274) regulating the emission of smoke, the provisions of subsection (4) of section 103, *infra*, apply.

Section 103, Public Health Act, 1936.—Procedure with respect to smoke nuisances.

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- (4) Where byelaws made under the next succeeding section are in force for regulating the emission of smoke of such colour, density or content as may be prescribed by the byelaws, the emission of smoke of the character so prescribed for such period as may be so prescribed either from buildings generally to which the enactments relating to smoke nuisances apply, or from such classes of those buildings as may be so prescribed, shall, until the contrary is proved, be deemed to be a statutory nuisance and a smoke nuisance.

The effect of subsections (3) and (4), *supra*, may be summarised as follows:—

- (i) The "best practicable means" defence is only available in proceedings for the emission of smoke from a chimney, where the smoke is *not black* smoke; where black smoke is emitted, this defence is not available in any circumstances whatsoever; and
- (ii) Where byelaws have been adopted defining as a nuisance the emission of smoke of specified colour and density, for a prescribed period, the onus of proof is removed from the local authority to the person charged. In other words, the defendant has to prove that a nuisance has not been created; the prosecution has only to prove that the byelaw has been broken by the emission of smoke contrary to its provisions.

Where byelaws have not been adopted, it is for the local authority, as prosecutors, to prove that a nuisance has been committed in each individual case.

It was held^(l) that a large building let in residential flats was not a private dwelling-house within the meaning of the

(k) *Weekes v. King* (1885), 49 J.P. 709; 36 Digest 181, 257.

(l) *Queen Anne Mansions v. Westminster Corpn.* (1901), 46 Sol. Jo. 70.

Public Health (London) Act, 1891(*m*). Similarly, a west-end club is not a private dwelling-house(*n*). Under the Public Health (London) Act, 1891, *supra*, it has been held that the funnel of a Thames Steamship is a "chimney" within the meaning of that Act(*o*). The proviso to subsection (4) of section 267 of the Act of 1936, *infra* (which applies to ships certain of the provisions of the Act, including, *inter alia*, those relating to smoke nuisances), now makes the position quite clear so far as England and Wales are concerned.

Section 267, Public Health Act, 1936.—Application to ships and boats of certain provisions of Act.

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 (4) The provisions of this Act referred to in the preceding subsections are Parts III, V, VI and XII and, so far as regards boats used for human habitation, the provisions of Part II relating to filthy or verminous premises or articles and verminous persons:

Provided that the provisions of the said Part III with regard to smoke nuisances shall not apply in relation to any vessel habitually used as a sea-going vessel, except that a funnel of, or chimney on, any such ship sending forth black smoke in such quantity as to be a nuisance shall be a statutory nuisance.

Where black smoke was emitted in such quantity as to be a nuisance under the Nuisances Removal Acts, and no evidence was given to show that any inquiry had been made as to who had charge of the furnaces, it was held that the owners were rightly summoned, as they were responsible for the acts of their servants(*p*). In a further case under section 91 of the Public Health Act, 1875(*q*), the owner of a mill was summoned in respect of a nuisance caused by inefficient stoking. The justices dismissed the case but they were held to be wrong in holding that the owner was not liable(*r*). In a case(*s*) where proceedings were taken in respect of the emission of smoke from several chimneys on the same premises, the summons was objected to on the grounds that it ought to have indicated from which of the chimneys the smoke was said to issue, and the justices allowed the objection, but it was held that they were wrong and ought to have heard the evidence and made an order in respect of one or more of the chimneys.

It has been held that smoke need not be injurious to health

(*m*) 11 Halsbury's Statutes 1025.

(*n*) *McNair v. Baker*, [1904] 1 K.B. 208; 36 Digest 181, 261.

(*o*) *Tough v. Hopkins*, [1904] 1 K.B. 804; 36 Digest 182, 277.

(*p*) *Barnes v. Ackroyd* (1872), L.R. 7 Q.B. 474; 36 Digest 183, 276.

(*q*) 13 Halsbury's Statutes 661.

(*r*) *Niven v. Greaves* (1890), 54 J.P. 548; 36 Digest 183, 278.

(*s*) *Barnes v. Norris* (1876), 41 J.P. 150; 36 Digest 181, 256.

to be a nuisance(*t*), nor is it necessary to prove that any person or property is injuriously affected by it(*u*).

SMOKE OBSERVATIONS.

Section 91 of the Act of 1936 (see *ante*, p. 217), places a general duty upon a local authority to cause their district to be inspected from time to time with a view to the detection of nuisances, and in order that this section may be complied with in respect of smoke nuisances, it is necessary that observations should be taken of chimneys with a view to ascertaining the amount and type of smoke emitted.

Smoke observations are usually carried out for a period of thirty minutes, during which time the sanitary inspector must have the chimney under continual observation in order to record exactly the kind of smoke and the period during which each kind is emitted.

Other methods of recording the emission of smoke have been used with varying degrees of success. The Ringlemann shade cards consist of a series of six cards, with black lines ruled on a white background, the lines being placed at right angles. The rulings and thicknesses of the lines are as follows:—

Card No. 0—All white

„	1—Black lines, 1 mm. thick, 9 m.m. apart			
„	2—	2.3	„	7.7
„	3—	3.7	„	6.3
„	4—	5.5	„	4.5
„	5—All black			

Viewed at from a distance of about fifty feet, these cards appear as varying degrees of density from white to black. Two observers are required, one to hold the cards and the other to compare the smoke with the cards(*a*). Similar types of cards have been devised, but they all suffer from the objection that the use of two inspectors lends too much publicity to the taking of the observation, and the fact that a particular chimney is being watched, will be obvious to the stokers. An instrument—the carboscope—based somewhat on the same principle as the shade cards, has also been used. It is similar to a telescope, having six “fields” set in a revolving disc. Each field is half clear glass and half tinted, the six fields being tinted successively from light to dark,

(*t*) *Gaskell v. Bayley* (1874), 38 J.P. 293; 36 Digest 183, 273.

(*u*) *South London Electric Supply Corporation v. Perrin*, [1901] 2 K.B. 186; 36 Digest 183, 274.

(*a*) For fuller details of shade cards, see “The Smoke Problem of Great Towns,” by Shaw and Owen (1925), Constable and Co., London, p. 228 *et seq.*

and by revolving the disc, the appropriate field can be matched with the colour of the smoke under observation. By calculation, the density of the smoke can be ascertained (*b*).

From the practical point of view, shade cards and other methods of taking smoke observations have not proved generally successful, and observations taken with a view to the detection of nuisances by the emission of smoke are invariably taken by sanitary inspectors by the naked eye and recorded in the manner indicated previously. In spite of personal variations between different inspectors, the method is quite successful, works well in practice, and has not been seriously challenged in the courts. Great care is necessary in taking observations, both as to the selection of a suitable point from which to watch the chimney, and the recording of the times during which the various classes of smoke are discharged. It is not sufficient to record the emissions in whole minutes, they must be divided accurately into seconds, the various bursts of the different grades of smoke being totalled at the end of the observation.

There is no definition of "black smoke." The meanings assigned to the word "black" in the Shorter Oxford English Dictionary(*c*) include, *inter alia*,—

- absorbing all light ;
- of the colour of night ;
- of the colour of soot or coal ;
- characterized by absence of light.

Generally speaking, therefore, the term "black smoke" is considered to mean smoke which appears black in colour and is of such density that light cannot penetrate through it, so that the top of the chimney is not properly distinguishable from the smoke. Actually, the density of the smoke depends upon the size of the chimney (*i.e.* the thickness of the column of smoke) and the amount of soot contained in the smoke.

In selecting a position from which to record a smoke observation, the sanitary inspector should choose a spot so that he will have an unobstructed view of the chimney, which should be approximately one hundred yards away. The inspector's position should be such that the smoke issuing from the chimney passes across his line of vision, either to the right or the left. The position should not be such that the sun is immediately behind the smoke, as it will tend to reduce the apparent density of the smoke.

(*b*) *Ibid.*, p. 231.

(*c*) "The Shorter Oxford English Dictionary" (1933). vol. 1. n. 184.

When an inspector has completed an observation, the result of which shows that a nuisance has been committed, it is his duty, in accordance with section 102 of the Act of 1936, *infra*, to notify the occupier of the premises immediately and if such notification is not in writing, to confirm it in writing within twenty-four hours.

Section 102, Public Health Act, 1936.—Notice to occupier of existence of smoke nuisance.

Where in the opinion of an authorised officer of a local authority a smoke nuisance exists, he shall, as soon as practicable after he has become aware thereof, notify the occupier of the premises on which the nuisance exists, and, if that notification was not in writing, shall, within twenty-four hours after he became aware of the nuisance, confirm the notification in writing.

BYELAWS RELATING TO SMOKE NUISANCES.

Section 104 of the Act of 1936, *infra*, empowers a local authority to make byelaws with a view to the prevention of smoke.

Section 104, Public Health Act, 1936.—Byelaws as to smoke.

- (1) A local authority may, and if so required by the Minister shall, make byelaws regulating the emission of smoke of such colour, density, or content as may be prescribed by the byelaws.
- (2) Building byelaws may require the provision in new buildings, other than private houses, of such arrangements for heating or cooking as are calculated to prevent or reduce the emission of smoke.
- (3) A local authority who propose to apply to the Minister for confirmation of any byelaws under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

The following is the usual form of byelaw made under subsection (1), *supra*, governing the emission of black smoke.

Byelaw regulating the emission of black smoke.

The Oxford City Council do by this byelaw prescribe that the emission of black smoke for a period of two minutes in the aggregate within any continuous period of thirty minutes from any one chimney in a building other than a private dwelling house shall until the contrary is proved be presumed to be a nuisance.

It should be remembered that where a byelaw is in force defining what is to be considered a smoke nuisance, the onus of proving that a nuisance has not been committed is upon the party charged, and it is not the duty of the local authority to prove that a nuisance has occurred (see *ante*, p. 270). In the absence of a byelaw, the authority must prove that a

nuisance has taken place because of the emission of the particular type of smoke for a certain period of time.

The object of the byelaws which may be made under subsection (2) of section 104, *ante*, p. 274, is to secure the installation of means of heating and cooking, other than the burning of raw coal, but it should be noted that such byelaws may apply only to buildings other than private houses, and so far as is known, no local authority has yet made byelaws of this kind.

PROCEDURE WITH RESPECT TO SMOKE NUISANCES.

Subsection (1) of section 103 of the Act of 1936, *infra*, provides that smoke nuisances may be dealt with in a similar way to statutory nuisances under section 93 and the following sections of that Act (see chapter 9, *ante*, p. 216).

Section 103, Public Health Act, 1936.—Procedure with respect to smoke nuisances.

- (1) Subject to the provisions of this section, where a smoke nuisance exists on any premises, an abatement notice may be served and a complaint with respect to the nuisance may be made in like manner, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of any other statutory nuisance.

The procedure involves the service of an abatement notice, and the making of a nuisance order by the court. Upon conviction, the court may impose a fine not exceeding fifty pounds, and upon failure to comply with, or a contravention of, a nuisance order, there is a penalty not exceeding ten pounds and a further penalty not exceeding five pounds for each day on which the offence continues after conviction therefor(*d*).

It has been held that separate informations may be laid in respect of each day during which the order of the court is not obeyed, and upon conviction, separate penalties may be imposed(*e*).

Generally speaking, an abatement notice must state the nature of the works which the local authority require to be carried out to abate the nuisance(*f*), but it has been held that in a case of a nuisance arising from the emission of black smoke from a factory chimney, it is not necessary to do so(*g*). It was held in a case under section 5(5) of the Public Health

(*d*) Sect. 103(5), Public Health Act, 1936; 29 Halsbury's Statutes 401.

(*e*) *R. v. Waterhouse* (1872), L.R. 7 Q.B. 545; 36 Digest 180, 255.

(*f*) *R. v. Wheatley* (1885), 16 Q.B.D. 34; 36 Digest 236, 756.

(*g*) *Millard v. Wastall*, [1898] 1 Q.B. 342; 36 Digest 232, 725.

(London) Act, 1891(*h*), that notwithstanding a requirement in that section that "an abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance," it is not necessary for the justices to specify the work when the nuisance arises from the emission of black smoke and the only remedy is proper stoking(*i*).

Normally, legal proceedings must be taken within six months of the failure to comply with a notice or the making of a nuisance order(*k*), but it was held that this did not apply in the case of a continuing offence in respect of the emission of smoke. In this case, an order was made on the 20th July, 1868, requiring alterations to a chimney to be carried out within two months. Certain alterations were carried out and black smoke ceased to issue until 4th February, 1869, when a further emission took place and also on the following days. In July, 1869, the local authority took proceedings for failure to comply with the order made in the previous July(*l*). On the other hand, in a case taken under the Public Health (London) Act, 1891, where notice was served by the local authority in March, 1904, and no further nuisance occurred until January, 1906, proceedings then being taken for failure to comply with the notice, the decision of the magistrate that the matter complained of in 1906 was a separate occurrence from that in 1904, was upheld on appeal(*m*), and this decision was followed in a further case where the interval was only six months(*n*).

EXEMPTIONS FROM THE PROVISIONS RELATING TO SMOKE NUISANCES.

Mines and certain metallurgical processes, referred to in section 109 of the Act of 1936, *post*, p. 277, are exempted from the provisions relating to smoke nuisances, but it should be noted that this is not an absolute saving, applying only so as to prevent any obstruction or interference with the process carried on. In other words, action can be taken in respect of a smoke nuisance, provided the trade or business is not obstructed or interfered with.

(*h*) 11 Halsbury's Statutes 1030.

(*i*) Central London Rail. Co. *v.* Hammersmith B.C. (1904), 73 L.J.K.B. 623; 36 Digest 237, 760.

(*k*) Sect. 11, Summary Jurisdiction Act, 1848; 11 Halsbury's Statutes 278.

(*l*) Higgins *v.* Northwich Union (1870), 34 J.P. 806; 36 Digest 238, 770.

(*m*) *Battersea B.C. v. Goerg* (1906), 71 J.P. 11; 36 Digest 181, 258.

(*n*) *Greenwich B.C. v. L.C.C.* (1912), 76 I.P. 267; 36 Digest 181 259

Section 109, Public Health Act, 1936.—Saving for mines, smelting works, etc.

- (1) Nothing in this Part of this Act shall be construed as extending to a mine of any description so as to interfere with, or obstruct the efficient working of, the mine, or as extending to the smelting of ores and minerals, to the calcining, puddling and rolling of iron and other metals, to the conversion of pig iron into wrought iron, or to the reheating, annealing, hardening, forging, converting and carburising of iron and other metals, so as to interfere with or obstruct any of those processes.
- (2) The Minister may by order—
 - (a) extend the preceding subsection to any other industrial process specified in the order ;
 - (b) exclude from the application of that subsection so far as smoke nuisances are concerned any process specified in the subsection ;
 and any order so made may contain conditions and limitations subject to which the inclusion or exclusion is to take effect ;
 Provided that an order made by the Minister under this subsection shall be provisional only and shall not have effect until it is confirmed by Parliament.

It will be observed that subsection (2), *supra*, enables the Minister of Health to add further processes to the exempted list or to remove from that list, processes already on it.

The court laid down clearly in a case under the Public Health Act, 1875, that the provisions relating to smoke nuisances, applied to a chimney of a coal mine, unless it could be proved that the smoke could not be prevented without interfering with the efficient working of the mine(o). It should be noted that section 109, *supra*, does not exempt mines from proceedings in respect of a public nuisance brought by the Attorney-General, nor from the ordinary common law liability respecting damage to property(p).

A competent authority may suspend the operation of the provisions of Part III of the Act of 1936 and any byelaws made thereunder, as an emergency measure(q).

SMOKE FROM SPECIAL PREMISES, ETC.

(a) **Ships.**—Section 267 of the Act of 1936 (see *ante*, p. 83) applies the provisions relating to smoke nuisances, to any vessel as if it were a house, building or premises, and the master or other officer in charge of the vessel were the occupier, provided that such provisions do not apply in relation to any vessel habitually used as a sea-going vessel, except

(o) *Patterson v. Chamber Colliery Co.* (1892), 56 J.P. 200 ; 36 Digest 182, 269.

(p) *Att.-Gen. v. Logan*, [1891] 2 Q.B. 100 ; 36 Digest 182, 263.

(q) Regulation 54AA, Defence (General) Regulations, 1939, S.R. & O, 1940,

that a funnel of, or chimney on, any such ship sending forth black smoke in such quantity as to be a nuisance, shall be a statutory nuisance. In accordance with subsection (5) of section 267, *supra*, vessels under the command or charge of an officer holding His Majesty's commission or any vessel belonging to a foreign government, are exempted entirely from the provisions of the Act of 1936, including those relating to smoke nuisances.

(b) **Crown property.**—Where a local authority are satisfied that a smoke nuisance occurs on premises used by the Crown, they may take action in accordance with section 106 of the Act of 1936, *infra*, and report the matter to the appropriate Government department. It should be noted that having done so, the question as to what action, if any, should be taken to deal with the nuisance, rests entirely with the Minister concerned, and if he fails to do anything in the matter, the local authority cannot take any further steps.

Section 106, Public Health Act, 1936.—*Application to Crown of provisions as to smoke nuisances.*

If it appears to a local authority that a smoke nuisance within, or affecting any part of, their district exists on any premises occupied for the public service of the Crown, they shall report the circumstances to the appropriate Government department, and, if the Minister responsible for that department is satisfied after due inquiry that such nuisance exists, he shall cause such steps to be taken as may be necessary to abate the nuisance and to prevent a recurrence thereof.

When a sanitary inspector becomes aware of the occurrence of a smoke nuisance on Government premises, as a result of the taking of a smoke observation, it will be necessary for him to forthwith report the matter to the occupier of the premises, in accordance with section 102 of the Act of 1936 (see *ante*, p. 274) and to confirm the notice in writing within twenty-four hours.

(c) **Railway locomotives.**—Section 114 of the Railways Clauses Consolidation Act, 1845(*r*), provides that every locomotive steam engine to be used on the railway must, if it uses coal or other similar fuel emitting smoke, be constructed on the principle of consuming, and so as to consume, its own smoke, and if any engine is not so constructed the company or person using it is liable to a penalty of five pounds for every day during which the engine is used on the railway. This section was amplified by section 19 of the Regulation of Railways Act, 1868(*s*), which provides that where a locomotive engine does not consume its own smoke, although it is properly con-

structed to do so, due either to the fault of the company or of any servant in their employ, the company are guilty of an offence under section 114, *supra*.

It was held that in spite of the legislature having authorised the construction of the railway, the railway company were not entitled to use engines which emit smoke contrary to section 114, *supra*(*t*). In a further case(*u*), black smoke was emitted for more than three minutes on several occasions and evidence was given that only smoky coal was used. The Divisional Court upheld a conviction under sections 114 and 19, *supra*, on the ground that there was evidence that black smoke had been unnecessarily caused and although no evidence was given to show that the locomotive was not constructed so as to consume its own smoke, the company gave no explanation of the emission of the smoke. In another case, where it was proved that the smoke was not emitted through any fault in stoking or management of the engine, and the fuel used was good hard bituminous steam coal, normally used in some districts, it was held that the engine had not failed to consume its own smoke within the meaning of the Acts(*x*).

Considerable nuisance not infrequently arises as a result of smoke from railway engines, especially those engaged in shunting operations in sidings, but great care is necessary before taking action against a railway company because it is not an easy matter to prove, either that the engine is not properly constructed or that although so constructed, it has failed to consume its own smoke. It is particularly important in a case of this kind to notify the company informally in the first place. If, however, it is found necessary to take legal proceedings, the case should be carefully prepared and expert evidence submitted in support.

Under the Railway Fires Act, 1905(*a*), and the Railway Fires Act (1905) Amendment Act, 1923(*b*), a railway company are empowered to take action with a view to preventing the spread of fire caused by sparks or cinders emitted from a locomotive engine, and they may enter land and cut down any undergrowth, etc. Trees, bushes or shrubs, may be cut down but only with the consent of the owner, to whom full compensation must be paid.

(d) **Road vehicles.**—Under section 30 of the Road Traffic

(*t*) *Smith v. Midland Railway Co.* (1877), 26 W.R. 10 ; 38 Digest 43, 250.

(*u*) *S.E. Chatham Rail. Co. v. L.C.C.* (1901), 65 J.P. 568 ; 38 Digest 304, 309.

(*x*) *L.C.C. v. Great Eastern Railway Co.*, [1906] 2 K.B. 312 ; 38 Digest 304, 308.

Act, 1930(c), the Minister of Transport has made Regulations governing, *inter alia*, the consumption of smoke and the emission of visible vapour, sparks, ashes and grit, by road vehicles. These Regulations(d), take the place of the repealed section 30 of the Highways and Locomotives (Amendment) Act, 1878(e).

Motor Vehicles (Construction and Use) Regulations, 1937, Articles 20, 21, 73.

20. Every motor vehicle shall be so constructed that no avoidable smoke or visible vapour is emitted therefrom ;

21. Every motor vehicle using solid fuel shall be fitted with an efficient appliance for the purpose of preventing the emission of sparks or grit, and also with a tray or shield to prevent ashes and cinders from falling on to the road ;

73. Every motor vehicle shall be maintained in such condition, and shall be so driven and used on a road, that there shall not be emitted therefrom any smoke, visible vapour, grit, sparks, ashes, cinders or oily substance, the emission of which could be prevented or avoided by the taking of any reasonable steps or the exercise of reasonable care, or the emission of which might cause damage to other persons or property or endanger the safety of any other users of the road in consequence of any harmful content therein.

Legal proceedings for offences against the above Regulations are taken by the police authorities under the Summary Jurisdiction Acts(f).

(e) **Private dwelling-houses.**—In boroughs and urban districts, and rural districts invested with the powers of the Towns Police Clauses Act, 1847, relating to fires(g), every person who *wilfully* sets fire to a chimney of a private dwelling-house is guilty of an offence and liable to a penalty not exceeding five pounds(h), but where the chimney is fired accidentally, the penalty is only ten shillings, provided that a penalty is not incurred if it is proved that the fire was in nowise owing to omission, neglect, or carelessness of the householder or his servant(i). Proceedings in respect of chimney firing are usually taken by the police authorities.

INVESTIGATION OF PROBLEMS RELATING TO ATMOSPHERIC POLLUTION.

In order that local authorities may undertake investigations regarding atmospheric pollution and research, and

(c) 23 Halsbury's Statutes 633.

(d) Motor Vehicles (Construction and Use) Regulations, 1937, S.R. and O., 1937, No. 229.

(e) 9 Halsbury's Statutes 183.

(f) Sect. 113, Road Traffic Act, 1930 ; 23 Halsbury's Statutes 683.

(g) Sects. 30–33, Towns Police Clauses Act, 1847 ; 13 Halsbury's Statutes 603, 604.

(h) *Ibid.*, sect. 30 ; 13 Halsbury's Statutes 603.

(i) *Ibid.*, sect. 31 ; 13 Halsbury's Statutes 603.

contribute towards the cost of such work carried on by other bodies, section 105 of the Act of 1936 has been included with the provisions relating to smoke nuisances.

Section 105, Public Health Act, 1936.—Power of local authority to investigate problems relating to atmospheric pollution.

Subject to such restrictions or conditions, if any, as the Minister may by regulations prescribe, a local authority may undertake investigations and research into problems relating to atmospheric pollution and the abatement of smoke nuisances, and may contribute towards the cost of similar investigations and research undertaken by other bodies or persons.

The Minister of Health has not yet made any regulations regarding the manner in which work of this kind must be carried out. As a general rule, it is confined to the payment of subscriptions to the funds of the National Smoke Abatement Society, a body concerned solely with matters connected with atmospheric pollution, and to the taking of regular records as to the amount and character of the atmospheric pollution in particular districts. Such records include—

- (1) Amount of soot deposited ;
- (2) Amount of sulphur gases in air ; and
- (3) Measurement of dust particles.

The records obtained by local authorities are collected by the Atmospheric Pollution Advisory Committee of the Department of Scientific and Industrial Research, who lay down standard conditions for the taking of observations and records, and the results are published annually⁽¹⁾, and are of considerable value and interest.

(1) *E.g.*, Atmospheric Pollution Advisory Committee, Annual Reports.

CHAPTER 12.

RIVERS AND STREAMS.

This chapter deals with the pollution of rivers and streams, and nuisances arising from watercourses, ditches, and ponds, etc.

POLLUTION OF RIVERS AND STREAMS.

The law relating to the pollution of rivers and streams is contained in the Rivers Pollution Prevention Acts of 1876(*a*) and 1893(*b*).

LOCAL AUTHORITIES FOR ENFORCEMENT OF ACTS.

Every sanitary authority are empowered to enforce the provisions of the Act of 1876, in accordance with section 8, *infra*.

Section 8, Rivers Pollution Prevention Act, 1876.—Power of sanitary authority to enforce Act.

Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875.

Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

The expression "sanitary authority" means—

"In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same : Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875"(*c*).

(*a*) 20 Halsbury's Statutes 316.

(*b*) 20 Halsbury's Statutes 345.

(*c*) Sect. 20, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 323.

So far as London is concerned, the Acts referred to above were all repealed by the Public Health (London) Act, 1891, which in turn has been repealed by the Public Health (London) Act, 1936. So far as England and Wales are concerned, the local authorities for the purposes of the Act of 1936 (which repealed the Act of 1875) are detailed in section 1 (see *ante*, p. 15), as the council of a borough, urban district or rural district.

Under section 9 of the Rivers Pollution Prevention Act, 1876(*d*), the provisions of the Act so far as the area controlled by the Lee Conservancy Board is concerned, are enforced by that Board to the exclusion of any other authority.

Every county council have power under section 14 of the Local Government Act, 1888(*e*), to enforce the provisions of the Rivers Pollution Prevention Act of 1876, in respect of any portion of a river or stream which is situated within or passes through the area of the county, and such council has all the powers of a sanitary authority under the above Act. This section enables a county council to institute legal proceedings against a local sanitary authority for the pollution of rivers or streams due to the discharge of sewage from sewers or works belonging to the latter authority. In this connection reference should be made to the Rivers Pollution Prevention Act, 1893 (see *post*, p. 286) and to section 30 of the Act of 1936 (see *ante*, p. 99; and *post*, p. 287).

Subsection (2) of section 14, *supra*, enables a county council to contribute towards the expenses of any prosecution taken under the Act of 1876, either by another county council or a local sanitary authority.

Subsection (3) of the same section, empowers the Minister of Health, by provisional order, to constitute a joint committee representing the administrative counties through which a river, or part thereof, passes, and the Minister may confer upon such joint committee, any or all of the powers of a sanitary authority under the Rivers Pollution Prevention Acts. In accordance with these provisions, the Mersey and Irwell Joint Committee, Ribble Joint Committee, and the West Riding of Yorkshire Rivers Board, have been constituted.

Rivers partly in England and partly in Scotland, are governed by the Rivers Pollution (Border Councils) Act, 1898(*f*), which enacts that the Minister of Health and the Secretary for Scotland may constitute a joint committee as above.

(*d*) 20 Halsbury's Statutes 320.

(*e*) 10 Halsbury's Statutes 697.

(*f*) 20 Halsbury's Statutes 245.

Under section 55(1) of the Salmon and Freshwater Fisheries Act, 1923(*g*), a fishery board, for the protection of the fisheries in their district, have all the powers of a sanitary authority under the Rivers Pollution Prevention Acts, and they may institute legal proceedings or aid any person or authority in the institution of such proceedings.

DEFINITION OF "STREAM."

The word "stream" is defined as follows(*h*)—

"Stream" includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Minister of Health by order published in the London Gazette. Save as aforesaid, it includes rivers, streams, canals, lakes and watercourses, other than water courses at the passing of this Act mainly used as sewers, and emptying directly into the sea or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid.

Water which only percolates through the ground, in no definite or visible channel, is not a stream(*i*). Since the passage of the Rivers Pollution Prevention Act, 1876, a natural stream cannot in law be turned into a sewer by the discharge of sewage into it(*j*).

OFFENCES.

The Act of 1876 deals with the pollution of rivers as a result of—

- (a) solid matters;
- (b) sewage pollutions; and
- (c) manufacturing and mining pollutions.

(a) **Solid matters.**—Section 2 of the Act of 1876, *infra*, makes it an offence if any solid refuse or matter is put or placed into a stream so as to interfere with its flow or to cause pollution.

Section 2, Rivers Pollution Prevention Act, 1876.—Prohibition as to putting solid matters into streams.

Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so

(*g*) 8 Halsbury's Statutes 812.

(*h*) Sect. 20, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 323.

(*i*) *MacNab v. Robertson*, [1897] A.C. 129; 19 Digest 146, 1001.

(*j*) *George Legge & Son, Ltd. v. Wenlock Corpn.*, [1938] A.C. 204; [1938] 1 All E.R. 37; Digest Supp.

as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

It should be noted with regard to the interference with the flow of the stream, that the cumulative effect of numerous deposits may constitute an offence, whereas a single act may not do so. In a case where several owners had works on the banks of a stream and discharged offensive matter therein, causing nuisance to an owner lower down, it was not accepted as a defence when one owner was proceeded against to say that his share of the pollution was infinitesimal^(h).

The expression "solid matter" does not include particles of matter in suspension in water and "polluting" does not include innocuous discoloration⁽ⁱ⁾. Where a putrid effluent was found to contain 97.6% of water and only 2.4% of solid matter, it was held not to be putrid solid matter^(m).

An offence is not committed under section 2 *supra*, unless the person charged knowingly permits the interference or pollution, and it should be noted that under section 17 of the Rivers Pollution Prevention Act, 1876⁽ⁿ⁾, the Act does not apply to or affect the lawful exercise of any rights of impounding or diverting water.

It should be noted that under section 259(2) of the Act of 1936 (see *post*, p. 296), a penalty is imposed upon any person who throws or deposits any cinders, ashes, bricks, stone, rubbish, dust, filth or other matter likely to cause annoyance into or in any river, stream, or watercourse.

(b) **Sewage pollutions.**—An offence is committed under section 3 of the Rivers Pollution Prevention Act, 1876, *infra*, if any solid or liquid sewage matter passes into a stream.

Section 3, Rivers Pollution Prevention Act, 1876.—Prohibition as to drainage into streams of sewers.

Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid

(h) *Blair v. Deakin* (1887), 57 L.T. 522; 36 Digest 215, 577.

(i) Sect. 20, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 323.

(m) *River Ribble Committee v. Halliwell*, [1899] 2 Q.B. 385; 44 Digest 41, 296; followed in *West Riding of Yorkshire Rivers Board v. Rawsons* (1903), 67 J.P. 407; 44 Digest 44, 310.

(n) 20 Halsbury's Statutes 229.

sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Minister of Health is satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Minister of Health may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Minister of Health, subject to such conditions, if any, as the Minister may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

The expression "person" includes any body of persons, whether corporate or unincorporate^(o) and would include a sanitary authority. Under the Rivers Pollution Prevention Act, 1893^(p), it is enacted that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, such authority are deemed to be knowingly permitting the sewage matter to fall, flow or be carried, within the meaning of section 3, *supra*. The vesting of sewers in a local authority is now dealt with in section 20 of the Act of 1936 (see *ante*, p. 104).

Legal proceedings for offences under section 3, *supra*, must be taken before the county court, and it is for that court to determine whether in fact the best practicable and available means have been taken to render the sewage matter harm-

(o) Sect. 20, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 323.

(p) 20 Halsbury's Statutes 345.

less(*g*), but a certificate granted by an inspector of the Ministry of Health in accordance with section 12, *infra*, must be accepted as evidence that the best practicable means have, in fact, been taken.

There is no general legal standard of purity for sewage effluents. According to the Royal Commission on Sewage Disposal(*r*), a satisfactory effluent should not contain more than 3·0 parts per 100,000 of suspended solids, and should not take up more than 2·0 parts per 100,000 of dissolved oxygen in five days at 65° F. The Hertfordshire County Council (Colne Valley Sewerage, etc.), Act, 1937 (*s*), provides, under penalty, that a prescribed amount of sewage and stormwater shall be so treated as to comply with the above standard and also be free from offensive odour and shall not become dark coloured when incubated for five days at 80° F.

Section 12, Rivers Pollution Prevention Act, 1876.—Certificate of inspector of Minister of Health as to best practicable means.

A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Minister of Health to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Minister of Health against the decision of the inspector; and the Minister may either confirm, reverse, or modify his decision and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the Minister may appear just.

It is important to note that a person, other than a sanitary authority, cannot be guilty of an offence if the sewage matter complained of passes through a drain into a sewer belonging to the local authority with their consent, and thence into the stream.

In considering section 3, *ante*, p. 285, regard should be paid to section 30 of the Act of 1936, *infra*.

Section 30 Public Health Act, 1936.—Sewage, etc., to be purified before discharge into streams, canals, etc.

Nothing in this Part of this Act shall authorise a local authority to construct or use any public or other sewer, or any drain or

(*g*) *West Riding of Yorkshire C.C. v. Holmfirth Urban Sanitary Authority*, [1894] 2 Q.B. 842; 44 Digest 46, 327.

(*r*) 1898–1915; 8th Report. 1912.

outfall, for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, until the water has been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.

The expression "filthy water" is distinguishable from sewage. Where surface water from a roadway was rendered noxious by the use of a tar dressing on the road surface, the water from the road was held to come within the terms of the section and the local authority were not entitled to discharge it into a stream, even though the use of the tar was for the abatement of a dust nuisance on the road^(f). As a general rule, a local authority cannot disconnect a drain from a sewer after it has been properly connected thereto, on the grounds that nuisance arises from the discharge of the sewage^(u). In this connection it must be remembered that owners and occupiers have the right to drain into a public sewer in accordance with section 34 of the Act of 1936 (see *ante*, p. 115), provided, *inter alia*, that no person is entitled to discharge any liquid from a factory, other than domestic sewage, or any liquid from a manufacturing process. Under section 68 of the Public Health Act, 1875 (see *ante*, p. 176), a penalty is imposed upon any person causing water to be corrupted by gas washings.

In accordance with the provisions of section 27 of the Act of 1936 (see *ante*, p. 113), no person may throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating therewith, any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to effect prejudicially the treatment and disposal of the sewage, or any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam which, or a liquid which when so heated, either alone or in combination with the sewage, is dangerous, or the cause of a nuisance, or prejudicial to health, or any petroleum spirit or carbide of calcium. The expression "petroleum spirit" means any crude petroleum, oil made from petroleum, or from coal, shale, peat or other bituminous substances, or product of petroleum or mixture containing petroleum, which, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act, 1928^(x), gives off an inflammable vapour at a temperature of less than 73 degrees Fahrenheit,

(f) *Dell v. Chesham U.D.C.*, [1921] 3 K.B. 427; 26 Digest 408, 1290.

(u) *Ainley v. Kirkheaton L.B.* (1891), 60 L.J. Ch. 734; 41 Digest 42, 305.

(x) 13 Halsbury's Statutes 1170.

The drainage of trade premises is now governed by the Public Health (Drainage of Trade Premises) Act, 1937(*y*), which gives a right to occupiers of trade premises to discharge trade effluent into public sewers subject to special restrictions contained in the Act, and notwithstanding the provisions of section 34 of the Act of 1936 (see *ante*, p. 115). Section 27 of the Act of 1936 *supra* is modified so far as it applies to trade effluent.

(c) **Manufacturing and mining pollutions.**—An offence is committed under section 4 of the Rivers Pollution Prevention Act, 1876, if any person allows any poisonous, noxious or polluting liquid to pass into a stream from any factory or manufacturing process.

Section 4, Rivers Pollution Prevention Act, 1876.—Prohibition as to drainage into streams from manufactories.

Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Where the polluting liquid enters the stream from a sewer belonging to a local authority, that authority may be proceeded against(*z*). Where polluting liquid is discharged into a stream in contravention of section 4, *supra*, the stream does not become a sewer within the meaning of the Public Health Act(*u*). In a later case, where the natural flow of water through the stream was only intermittent, the discharge of sewage into it was held to convert it into a sewer(*b*). Where

(*y*) 30 Halsbury's Statutes 695; and see *ante*, p. 115 *et seq.*

(*z*) *West Riding of Yorkshire Rivers Board v. Linthwaite* U.D.C., [1915] 2 K.B. 436; 44 Digest 43, 303.

(*a*) *West Riding of Yorkshire Rivers Board v. Gaunt* (1903), 67 J.P. 183; 41 Digest 9, 57; and see also *West Riding of Yorkshire Rivers Board v. Preston* (1905), 69 J.P. 1; 41 Digest 8, 51.

(*b*) *Att.-Gen. v. Lewes Corpn.*, [1911] 2 Ch. 495; 41 Digest 9, 55.

polluting liquid was discharged into a sewer, passing thence to a stream, it was held that an offence had been committed even assuming there was a prescriptive right to discharge the liquid into the sewer in question, which was in existence at the passing of the Act of 1876, and was vested in the local authority(c). The proviso with regard to newly constructed channels only applies where the new channel is in substitution of one in existence at the time of the passing of the Act(d). The subject of trade effluents is now governed by the Public Health (Drainage of Trade Premises) Act, 1937(e), details of which are given on p. 115, *ante*, *et seq.*

Section 5 of the Rivers Pollution Prevention Act, 1876, *infra*, deals with the drainage into streams from mines, and an offence is committed if solid matter is discharged in such quantities as to interfere with the flow, or if solid or liquid matter causes pollution.

Section 5, Rivers Pollution Prevention Act, 1876.—Prohibition as to drainage into streams from mines.

Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.

Proceedings cannot be taken in respect of manufacturing and mining pollutions, under sections 4 and 5, *supra*, except by a sanitary authority with the consent of the Minister of Health, in accordance with section 6, *infra*.

Section 6, Rivers Pollution Prevention Act, 1876.—Restriction of proceedings under this Part of the Act.

Unless and until Parliament otherwise provides the following enactments shall take effect: Proceedings shall not be taken against any person under this Part of this Act save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Minister of Health: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings

(c) *Butterworth v. West Riding of Yorkshire Rivers Board*, [1909] A.C. 45; 44 Digest 42, 301.

(d) *Midlothian C.C. v. Pumpherson Oil Co.* (1904), 6 F. 387; 44 Digest 42, a.

(e) 30 Halsbury's Statutes 695.

or apply for the consent by this section provided, the person so interested may apply to the Minister; and if the Minister on inquiry is of opinion that the sanitary authority should take proceedings, he may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The Minister in giving or withholding his consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The Minister shall not give his consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless he is satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material inquiry will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this Part of this Act, shall, notwithstanding any consent of the Minister, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Minister is by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

Before instituting proceedings, notice must be served upon the person concerned, in accordance with section 13 of the Rivers Pollution Prevention Act, 1876 (see *post*, p. 293). The consent of the Minister of Health under section 6, *supra*, must be obtained before the notice under section 13, *supra*, is served (*f*), and if the proceedings are dropped, consent must be obtained again before new proceedings are commenced even in respect of the same pollution(*g*).

LEGAL PROCEEDINGS.

Where an offence is committed against any of the provisions of the Rivers Pollution Prevention Act, 1876, legal proceedings must be taken before the county court and the

(*f*) *West Riding of Yorkshire Rivers Board v. Robinson*, [1907] 1 K.B. 431; 44 Digest 50, 357.

(*g*) *Ex parte Mersey and Irwell Watershed Joint Committee* (1895), 59 J.P. Jo. 756.

procedure to be followed by that court is laid down in section 10, *infra*.

Section 10, Rivers Pollution Prevention Act, 1876.—Offences to be restrained by summary order of county court.

The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order; and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court.

A county court is not justified in refusing to make an order simply because the pollution in respect of which the order is sought is not appreciable owing to the stream being polluted from other sources^(h). Where proceedings were taken and an order of the court obtained, it was held to be unnecessary to serve notice under section 13⁽ⁱ⁾, before applying to the court for penalties upon failure to comply with the terms of the original order^(k).

An appeal from the findings of the county court lies to the High Court, either on a point of law or on the merits of

^(h) *Staffordshire C.C. v. Seisdon R.D.C.* (1907), 71 J.P. 185; 44 Digest 42, 300.

⁽ⁱ⁾ 29 Halsbury's Statutes 322.

^(k) *West Riding of Yorkshire Rivers Board v. Heckmondwike U.D.C.* (1914), 78 J.P. 190; 44 Digest 50, 358.

the case, in accordance with section 11 of the Rivers Pollution Prevention Act, 1876(*l*), and under the same section any plaint entered in a county court may be removed to the High Court by order of a judge of that Court where he considers it desirable to do so in the interests of justice. An application under section 11, *supra*, was refused on the grounds of expense and because it would have precluded the holding of a local inquiry(*m*).

Proceedings may not be taken in respect of any offence under the Rivers Pollution Prevention Acts until the expiration of two months from the date of service of written notice of the intention to take proceedings given to the offender, and proceedings cannot be taken under those Acts whilst other proceedings are pending(*n*).

Under section 16 of the Rivers Pollution Prevention Act, 1876(*o*), the powers given by that Act do not prejudice or affect any other rights or powers and the ordinary remedies at law may be taken.

Where a local authority have been empowered or required by any statutory provisions to discharge sewage into the sea or any tidal waters, nothing done in pursuance of such provisions shall be deemed to constitute an offence under the Rivers Pollution Prevention Acts(*p*). By the Salmon and Freshwater Fisheries Act, 1923(*q*), the provisions of the Rivers Pollution Prevention Acts may, for the purpose of the protection of fisheries, be extended to include the sea and tidal waters, to such extent as may be determined by an order made by the Minister of Health.

Emergency provisions.—As to emergency provisions in operation during the war, see Defence (General) Regulations, 1939, Regulation No. 54AA, *ante*, p. 249.

MISCELLANEOUS PROVISIONS RELATING TO THE POLLUTION OF RIVERS AND STREAMS.

In addition to the Rivers Pollution Prevention Acts, there have been numerous sections in other Acts, dealing with the prohibition or restriction of the pollution of rivers and streams.

(*l*) 20 Halsbury's Statutes 321.

(*m*) *West Riding of Yorkshire Rivers Board v. Ravensthorpe U.D.C.* (1907), 71 J.P. 209; 44 Digest 51, 361.

(*n*) See sect. 13, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 322.

(*o*) 20 Halsbury's Statutes 323.

(*p*) See sect. 19, Rivers Pollution Prevention Act, 1876; 20 Halsbury's Statutes 323.

Waterworks Clauses Act, 1847(*r*).—This Act applies to waterworks authorised by an Act passed subsequent thereto and which declares it to be incorporated. It is an offence as regards any stream, etc., belonging to waterworks undertakers—

- (1) to bathe therein, wash, throw or cause to enter therein any dog or other animal ;
- (2) to throw rubbish, dirt, filth, or other noisome thing therein, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing ; and
- (3) to cause the water of any sink, sewer, or drain, steam engine, boiler or other filthy water to run or to be brought therein, or to do any other act whereby the water is fouled (*s*).

Under the same Act, it is also an offence for any person making or supplying gas

- (1) to cause or suffer to be brought or flow into any stream, etc., belonging to waterworks undertakers, or into any drain connecting therewith, any washing, or other substance produced in making or supplying gas ; or
- (2) wilfully to do any act connected with the making or supplying of gas whereby the water in any such stream is fouled(*t*).

Gasworks Clauses Act, 1847.—This Act applies to any gas works authorised by a subsequent Act that incorporates it and contains a similar provision to that in the Waterworks Clauses Act, *supra*, prohibiting the fouling of any stream, etc., by gas washings or other acts(*u*).

Lighting and Watching Act, 1833.—This Act only applies where gas is supplied to a parish adopting the provisions of the Act. It contains a provision prohibiting the fouling of any river, brook or running stream by gas washings, etc.(*x*).

Cemeteries Clauses Act, 1847.—This Act applies to any cemeteries authorised by a subsequent Act declaring it to be incorporated therewith. It prohibits a cemetery company causing or suffering to be brought or to flow into any stream, etc., any offensive matter from a cemetery whereby such water is fouled(*y*).

Diseases of Animals Act, 1894.—It is an offence to throw, place, or cause or suffer or be thrown or placed, into or in any river, stream, etc., the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected(*z*).

(*r*) 20 Halsbury's Statutes 186.

(*s*) Sect. 61, Waterworks Clauses Act, 1847 ; *ibid*, 206.

(*t*) *Ibid*, sects. 62 and 63. These sections are incorporated in the Public Health Act, 1936, by sect. 120 thereof.

(*u*) Sect. 21 ; 8 Halsbury's Statutes 1215.

(*x*) Sect. 50 ; *ibid*, 1203.

(*y*) Sects. 20–22 ; 2 Halsbury's Statutes 260.

(*z*) Sect. 52(vii) ; 1 Halsbury's Statutes 417.

Land Drainage Act, 1930.—A drainage board is empowered to make byelaws for preventing the obstruction of any water-course vested in or under the control of the board by the discharge therein of any liquid or solid matter or by reason of any such matter being suffered to flow or fall therein(*a*).

Salmon and Freshwater Fisheries Act, 1923.—Numerous provisions are included in this Act for the protection of fish. Fishery boards may make byelaws to regulate the deposit or discharge in any waters containing fish of any liquid or solid matter, specified therein, detrimental to salmon, trout, or freshwater fish, or the spawn, or food of fish, but not so as to prejudice any powers of a sanitary or other local authority to discharge sewage in pursuance of a public general Act or local Act or of any provisional order confirmed by Parliament(*b*). The Act also provides that no person shall cause or knowingly permit to flow or put, or knowingly permit to be put, into any waters containing fish, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish, or the spawning grounds, spawn, or food of fish, unless in the exercise of a lawful right or in continuation of a method in use before July 18th, 1923, and he proves that he has used the best practicable means within a reasonable cost to prevent such matter doing injury. No one, other than a sanitary or other local authority acting under statutory powers, may discharge any trade effluent into any waters containing fish by means of any work constructed or altered after January 1st, 1924, unless he gives three months' previous notice of the proposed new works to the fishery board or the Minister of Health(*c*). A competent authority(*d*) may, however, suspend the operation of these provisions during the period of the war emergency, subject to obtaining the consent of the Minister of Health(*e*).

NUISANCES FROM WATERCOURSES, DITCHES, PONDS, ETC.

The law relating to nuisances from watercourses, etc., is contained in sections 259 to 266 of the Act of 1936, which replaces Part V. of the Public Health Act, 1925(*f*).

(*a*) Sect. 47; 28 Halsbury's Statutes 529.

(*b*) Sect. 59 (*p*); 8 Halsbury's Statutes 815.

(*c*) Sect. 8; *ibid*, 783.

(*d*) See *ante*, p. 249.

(*e*) Defence (General) Regulations, 1939, Reg. 54AA, S.R. and O., 1940, No. 1032; 33 Halsbury's Statutes 646; see *ante*, p. 249.

(*f*) 13 Halsbury's Statutes 1137.

DEFINITION OF "WATERCOURSE."

The expression "watercourse" is not defined but there must be water flowing in a channel between more or less defined banks(g), and the watercourse may be natural or artificial(h). It was held in a case where the land was subject to periodical flooding by "bourne flows" from the chalk, that the course taken by such flows was not a watercourse(i).

NUISANCES IN CONNECTION WITH WATERCOURSES, ETC.

Section 259 of the Act of 1936, *infra*, provides that any pond, pool, ditch, gutter or watercourse which is in a foul or choked condition, shall be a statutory nuisance within the meaning of Part III. of that Act.

Section 259, Public Health Act, 1936.—Nuisances in connection with watercourses, ditches, ponds, etc.

(1) The following matters shall be statutory nuisances for the purposes of Part III of this Act, that is to say—

- (a) any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance ;
- (b) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health :

Provided that in the case of an alleged nuisance under paragraph (b) nothing in this subsection shall be deemed to impose any liability on any person other than the person by whose act or default the nuisance arises or continues.

- (2) A person who throws or deposits any cinders, ashes, bricks, stone, rubbish, dust, filth or other matter likely to cause annoyance into or in any river, stream or watercourse, or who suffers any such act to be done, shall be liable to a penalty not exceeding forty shillings.

The procedure for dealing with statutory nuisances is given in chapter 9 (see *ante*, p. 216) and is enforceable by all local authorities.

It should be noted that action under paragraph (b) of subsection (1) of section 259, *supra*, can only be taken against the person by whose act or default the nuisance arises or continues. The effect of this proviso is that action may be taken against a person other than the owner or the occupier of the land in which the watercourse is situated, and there may be difficulty in taking action in cases where the water-

(g) *R. v. Inhabitants of Oxfordshire* (1830), 1 B. and Ad. 289, *per* Lord Tenterden, L.C.J., at p. 301 ; 26 Digest 572, 2645.

(h) *Bowes v. Watson* (1879), 44 J.P. 364 ; 41 Digest 55, 398.

(i) *Pearce v. Croydon R.D.C.* (1910), 74 J.P. 429 ; 41 Digest 8, 53.

course has become choked or silted up as a result of the growth of natural vegetation. (A riparian owner is not liable at common law to scour the bed of a river if the obstruction is due to natural growth(*k*)). A local authority may, however, contribute the whole or a part of the expenses of executing any works in connection with watercourses (see *post*, p. 300).

In accordance with subsection (2) of section 260 of the Act of 1936, *infra*, a local authority may, without prejudice to their powers with respect to statutory nuisances, exercise the powers of a parish council under subsection (1) of that section.

Powers of a Parish Council.—A parish council are empowered by section 260 of the Act of 1936, *infra*, to deal with offensive ponds and ditches, etc.

Section 260, Public Health Act, 1936.—Power of parish council, or local authority, to deal with ponds, ditches, etc.

(1) A parish council may—

- (a) deal with any pond, pool, ditch, gutter or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing or covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right, or with any public drainage, sewerage or sewage disposal works;
- (b) execute any works, including works of maintenance or improvement, incidental to or consequential on any exercise of the foregoing power;
- (c) contribute towards the expenses incurred by any other person in doing anything mentioned in this subsection.

(2) Without prejudice to their right to take action in respect of any statutory nuisance, a local authority may exercise any powers which a parish council may exercise under this section.

CLEANSING OF OFFENSIVE DITCHES NEAR TO OR FORMING THE BOUNDARY OF DISTRICTS.

In certain cases where ditches forming the boundary of districts or which lie in an adjoining district but near to the boundary are offensive, action may be taken by a local authority with a view to obtaining an order under section 261 of the Act of 1936, *infra*, for the execution of the necessary work by the persons named in the order.

Section 261, Public Health Act, 1936.—Provisions for obtaining order for cleansing offensive ditches lying near to, or forming, boundary of district.

Upon a complaint by a local authority against the local authority of an adjoining district that a watercourse or ditch which forms

(*k*) *Hodgson v. York Corpn.* (1873), 28 L.T. 836; 44 Digest 59, 429.

the boundary between their districts, or which lies in the adjoining district but near to that boundary, is so foul and offensive as injuriously to affect the district of the complainants, a court of summary jurisdiction having jurisdiction in the place where the watercourse or ditch is situate may make such order as it deems reasonable with respect to the cleansing of the watercourse or ditch and the execution of any work appearing to the court to be necessary, and with respect to the persons by whom the work is to be executed, and the persons, by whom, and the proportions in which, the costs of the work are to be paid.

In a case where the justices made an order for the cleansing of a ditch rendered foul by sewage, it was held that the defendant authority could not plead that a trespass would be committed if the order was obeyed and that the order was rightly made on them(*l*).

CULVERTING OF WATERCOURSES.

If a local authority consider that any watercourse, etc., situated on land laid out for building or which abuts such land, should either be filled up or culverted, they may take action under section 262 of the Act of 1936. *infra*, requiring the owner of the land to fill in or cover over the watercourse in question.

Section 262, Public Health Act, 1936.—Power of local authority to require culverting of watercourses and ditches where building operations in prospect.

- (1) If a local authority consider that any watercourse or ditch, situate upon land laid out for building, or on which any land laid out for building abuts, should be wholly or partially filled up or covered over, they may by notice require the owner of the land laid out for building, before any building operations are begun or while any such operations are in progress, wholly or partially to fill up the watercourse or ditch, or to substitute therefor a pipe, drain or culvert with all necessary gullies and other means of conveying surface water into and through it.
- (2) Any question arising under this section between a local authority and an owner as to the reasonableness of any works which the authority require to be executed may, on the application of either party, be determined by a court of summary jurisdiction.
- (3) Any person who, on any land to which a notice given by a local authority under this section applies, begins or proceeds with any building operations before executing the works required by the notice, shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.
- (4) Nothing in this section shall empower an authority to require the execution of works upon the land of any person other than the owner of the land laid out for building, without the consent of that person, or prejudicially to affect the rights of any person not being the owner of the land so laid out.

Under section 263 of the Act of 1936, *infra*, a stream or watercourse in the district of any of the local authorities

(*l*) *Woburn S.A. v. Newport Pagnell S.A.* (1887), 51 J.P. 694.

mentioned in subsection (1) of that section, may not be culverted or covered in, except in accordance with plans submitted to and approved by the local authority. It should be noted that a local authority cannot require an owner of land to provide for the passage of a greater quantity of water than he is legally compelled to receive, but they may by arrangement with the owner secure provision for such greater quantity of water upon payment of the additional cost incurred.

Section 263, Public Health Act, 1936.—Watercourses in urban district not to be culverted except in accordance with approved plans.

- (1) It shall not be lawful within a borough or urban district, or a rural district or contributory place in which section fifty-two of the Public Health Act, 1925, was in force immediately before the commencement of this Act, to culvert or cover any stream or watercourse except in accordance with plans and sections to be submitted to and approved by the local authority, but such approval shall not be withheld unreasonably and, if the authority, within six weeks after plans and sections have been submitted to them, fail to notify their determination to the person by whom the plans and sections were submitted, they shall be deemed to have approved them.
- (2) Any question arising under this section between a local authority and an owner as to the reasonableness of any works which the authority require to be executed as a condition of their approval, or as to the reasonableness of their refusal to give approval, may, on the application of either party, be determined by a court of summary jurisdiction.
- (3) A local authority shall not, as a condition of approving plans or sections under this section, require an owner to receive upon his land, or to make provision for the passage of, a greater quantity of water than he is otherwise obliged to receive or to permit to pass, and, if the owner at the request of the authority makes provision for the passage of a larger quantity of water than he is obliged to permit to pass at the time of the commencement of any work under this section, any additional cost reasonably incurred by him in complying with the request of the authority shall be borne by them.
- (4) Any person who contravenes this section shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

These two important sections (262 and 263, *supra*) enable a local authority to exercise proper control over land which is about to be developed for building purposes, and so prevent nuisances arising from flooding or the use of streams, ditches, watercourses, etc., as places of deposit for rubbish and offensive matter. At the same time the surface drainage of the land may be regulated.

Repair and cleansing of culverts.—A borough or urban

in the Public Health Act, 1925, was in force, may take action under section 264, *infra*, requiring the repair, maintenance or cleansing of any culvert.

Section 264, Public Health Act, 1936.—Urban authority may require repair and cleansing of culverts.

The owner or occupier of any land within a borough or urban district, or a rural district or contributory place in which section fifty-three of the Public Health Act, 1925, was in force immediately before the commencement of this Act, shall repair, maintain and cleanse any culvert in, on or under that land, and, if it appears to the local authority that any person has failed to fulfil his obligations under this section, they may by notice require him to execute such works of repair, maintenance or cleansing as may be necessary. The provisions of Part XII of this Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this section.

Where a person upon whom a notice under section 264, *supra*, has been served, fails to execute the works specified, the local authority may themselves execute the necessary works (subject to the owner's right of appeal) and recover the costs incurred in accordance with section 290(6) of the Act of 1936 (see *ante*, p. 144). Under that section an owner may appeal against the demands of the local authority but only within twenty-one days from the date of service of the notice(*m*). Notice of the right of appeal must be endorsed on the notice(*n*) but upon proceedings being taken for recovery of expenses, nothing can be raised by the owner as to the validity of the notice(*o*).

Certain statutory undertakers, referred to in section 266(2) of the Act of 1936, *infra*, are exempt from the provisions relating to the culverting of streams.

CONTRIBUTIONS BY LOCAL AUTHORITY TOWARDS COST OF WORKS.

A local authority are empowered by section 265 of the Act of 1936, *infra*, to contribute towards the cost of any works required by sections 259 to 264 of that Act.

Section 265, Public Health Act, 1936.—Power of local authority to defray cost of, or execute, works relating to watercourses.

A local authority may, if they think fit, contribute the whole or a part of the expenses of the execution of works for any of the purposes mentioned in the foregoing provisions of this Part of this Act, or may by agreement with any owner or occupier themselves execute any such works which he may be required, or is entitled, to execute.

(*m*) Sect. 300(2), Public Health Act, 1936; 29 Halsbury's Statutes 516.

(*n*) *Ibid.*, sect. 300(3); 29 Halsbury's Statutes 515.

(*o*) *Ibid.*, sect. 290(7); 29 Halsbury's Statutes 510.

EXEMPTIONS FROM PROVISIONS RELATING TO WATERCOURSES, ETC.

The provisions of the Act of 1936 relating to watercourses, etc., detailed in sections 259 to 264, *supra*, do not apply in the cases referred to in section 266, *infra*.

Section 266, Public Health Act, 1936.—Saving for land drainage authorities, the London County Council, railway companies and dock undertakers.

- (1) The powers conferred by the foregoing provisions of this Part of this Act shall not be exercised—
 - (i) with respect to any stream, watercourse, ditch or culvert within the jurisdiction of a land drainage authority, except after consultation with that authority ;
 - (ii) with respect to any stream, watercourse, ditch or culvert vested in the London County Council, without the consent of that council :

Provided that nothing in this subsection shall apply in relation to the taking of proceedings in respect of a statutory nuisance.

- (2) Nothing in the foregoing provisions of this Part of this Act shall prejudice or affect the powers of any railway company or dock undertakers to culvert or cover in any stream or watercourse, or, without the consent of the railway company or dock undertakers concerned, extend to any culvert or covering of a stream or watercourse constructed by a railway company and used by them for the purposes of their railway, or constructed by dock undertakers and used by them for the purposes of their undertaking.

DISCHARGES FROM ALKALI, ETC., WORKS.

Under the Alkali, etc., Works Regulation Act, 1906(*p*), a local authority are bound, upon the request of the owner, to provide a drain or channel to take off acid and other liquid from his works, and discharge the same into the sea or a river or watercourse, providing no offence under the Rivers Pollution Prevention Acts, occurs(*q*).

DITCHES.

A highway authority may make, scour, cleanse and keep open ditches for the drainage of the highway, through any lands or grounds adjoining or lying near to the highway. Compensation must be paid to the owner of the land in respect of damage sustained by him(*r*). Any person who alters, obstructs or interferes with such ditches is liable to repay to the highway authority the cost of reinstatement and is also liable

(*p*) 13 Halsbury's Statutes 894.

(*q*) Sect. 3(3), Alkali, etc., Works Regulation Act, 1906 ; 13 Halsbury's Statutes 895.

(*r*) Sect. 67, Highway Act, 1835 ; 9 Halsbury's Statutes 83.

to a penalty(s). A ditch running between the road and the fence of adjoining land may form part of the highway(*t*), but this is a question of fact in each individual case and there is a presumption that a ditch has not been dedicated as part of a highway(*u*). Section 67, *supra*, does not authorise a highway authority to fill in a ditch without the owner's consent(*w*).

The Land Drainage Act, 1930(*x*), contains power relating to ditches and enables county councils and county borough councils to serve notice upon any person who impedes the proper flow of water in a watercourse(*y*) so as to endanger agricultural land, requiring him to do such work as may be necessary to put the watercourse into proper order. Subject to a right of appeal(*z*) to a court of summary jurisdiction, the local authority may, at the expiration of two months from the service of the notice, execute the required work and recover the costs incurred.

(s) *Ibid*, sect. 68.

(t) *Chorley Corp'n. v. Nightingale*, [1907] 2 K.B. 637 ; 26 Digest 315, 472.

(u) *Hanscombe v. Bedfordshire County Council*, [1938] Ch. 944.

(w) *Ibid*.

(x) 23 Halsbury's Statutes 529.

(y) "Watercourse" is defined as including ditches, drains, cuts, sewers (other than sewers under the control of a local authority within the meaning of the Public Health Act) and passages through which water flows—sect. 81, Land Drainage Act, 1930 ; 23 Halsbury's Statutes 582.

(z) *Ibid*, sect. 35 ; 23 Halsbury's Statutes 554.

CHAPTER 13.

DISPOSAL OF THE DEAD.

The disposal of the dead in such manner as to prevent danger to the public health or the creation of nuisance, is obviously a matter of considerable importance to sanitary authorities, and although sanitary officers are not directly concerned in the conduct and management of burial grounds and crematoria, it is desirable to include in the present volume a short chapter setting out briefly the more important points with regard to the disposal of the dead and certain other matters connected with dead bodies.

BURIAL AUTHORITIES.

The Burial Acts, 1852 to 1906(*a*), and the Public Health (Interments) Act, 1879(*b*), incorporating the Cemeteries Clauses Act, 1847(*c*), contain the provisions relating to "burial authorities," such term being defined as "any burial board, any council, committee or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act"(*d*). Under these Acts, burial grounds or cemeteries may be provided by numerous authorities, including burial boards, borough and district councils, parish councils, and joint committees.

In 1927(*e*), there were in England—

115	burial areas under specially elected burial boards ;
167	„ „ „ borough councils ;
199	„ „ „ urban district councils ;
235	„ „ controlled by joint committees ;
736	„ „ under parish councils ; and
28	„ „ „ parish meetings.

BURIAL GROUNDS AND CEMETERIES.

The law and practice relating to burial grounds is contained in the Burial Acts, 1852 to 1906, *supra*, and is different

(*a*) 2 Halsbury's Statutes 190-254.

(*b*) 13 Halsbury's Statutes 796.

(*c*) 2 Halsbury's Statutes 255.

(*d*) Sect. 11, Burial Act, 1900 ; 2 Halsbury's Statutes 252.

(*e*) See article on "Burial Authorities," Macmillan's Local Government Law and Administration in England and Wales, Vol. 2, p. 317.

from that in the Public Health (Interments) Act, 1879, and the Cemeteries Clauses Act, 1847, *supra*, relating to cemeteries.

A cemetery may not be constructed nearer to any dwelling-house than one hundred yards, except with the consent of the owner and occupier thereof(*f*), but this does not apply in respect of a house commenced to be erected after the ground was first used for burial purposes(*g*). The distance of one hundred yards is to be calculated from the house itself, and not from the curtilage(*h*) and the prohibition applies to burials only, and does not prevent land in the cemetery being used for other purposes(*i*).

The Ministry of Health require the following information when application is made for a loan sanction in respect of the provision of a cemetery :—

- (1) A copy of the resolution of the local authority authorising the application for loan sanction.
- (2) Plan of the site, drawn to scale, with the position of the trial holes indicated thereon.
- (3) Key plan showing the locality of the site, its situation in regard to adjoining land and properties, means of access to the site, position of any sources of water supply used for domestic purposes, and the compass points.
- (4) Plans, sections and estimates of the cost of all the proposed works.
- (5) Financial particulars of the district in the prescribed form.
- (6) Report by the medical officer of health on the suitability of the proposed site. The question of the freedom from risk of contaminating sources of domestic water supply, and of nuisance from the disposal of drainage water, must receive consideration in this report.
- (7) Area and precise locality of the proposed ground.
- (8) Whether any part of the proposed burial ground is outside the local authority's area, and the names of the parish and sanitary districts concerned.
- (9) Average annual number of burials in the district for ten years.
- (10) Whether an Order in Council is in force prohibiting the opening of a new burial ground in the parish in which the site is situated without the consent of the Secretary of State or the Minister of Health.
- (11) Distance of site from—
 - (a) nearest inhabited part of the district ;
 - (b) remotest part of the district ; and
 - (c) most densely populated part of the district.
- (12) Whether there are any dwelling-houses within one hundred yards of the site, and if so, whether the consents in writing of the owners, lessees and occupiers have been obtained.

(*f*) Sect. 2, Burial Act, 1906 ; 2 Halsbury's Statutes 254.

(*g*) *Ibid*, sect. 1 ; 2 Halsbury's Statutes 253.

(*h*) *Wright v. Wallasey L.B.* (1887), 18 Q.B.D. 783 ; 7 Digest 549, 273.

(*i*) *Cowley v. Byas* (1877), 5 Ch. D. 944 ; 7 Digest 548, 272.

- (13) Whether there are any sources of domestic water supply near the site, and if so, a description of such sources, and the distance in each case from the site.
- (14) Nature of the soil as ascertained by trial holes at least eight feet deep, such holes should preferably be sunk near each corner and the centre and elsewhere on the site.
- (15) Whether the soil is free from water to a depth of eight feet ; if not—
 - (a) the depth at which water is met with ;
 - (b) means available for the drainage of the subsoil to a depth of eight feet and the ultimate disposal of the subsoil water so drained.
- (16) Whether any agreement has been entered into for the purchase of the land.
- (17) The price to be paid for the land.

Local authorities may make byelaws under section 198 of the Act of 1936 (see *post*, p. 307) regarding mortuaries. This section repealed section 141 of the Public Health Act, 1875 (*k*), which was extended by the Public Health (Interments) Act, 1879(*l*), to cemeteries and as by section 38(1) of the Interpretation Act, 1889(*m*), the reference in the Act of 1879, *supra*, to the Act of 1875 must now be read as a reference to the Act of 1936, a local authority may make byelaws relating to the management of cemeteries. Regulations for the proper conduct of burials within a cemetery may also be made by a local authority under section 38 of the Cemeteries Clauses Act, 1847(*n*).

The Ministry of Health have issued Model Byelaws(*o*) relating to cemeteries, details of which are as follows :—

Model Byelaws relating to the Management of Cemeteries issued by the Ministry of Health.

- 1—"Grave" means a burial place formed in the ground by excavation and without any internal wall of brickwork or stonework or any other artificial lining.
 "Vault" includes underground burial-places of every description, except graves to which the word "grave" interpreted as aforesaid applies.
- 2—Every vault to be constructed of—
 - (a) good whole bricks or stone properly bonded and solidly put together, with good mortar compounded of good lime and clean sand or other suitable material, or with good cement, or with good cement mixed with clean sand ; or
 - (b) other good hard and suitable material properly and solidly put together.

(*k*) 13 Halsbury's Statutes 682.

(*l*) 13 Halsbury's Statutes 796.

(*m*) 18 Halsbury's Statutes 1005.

(*n*) 2 Halsbury's Statutes 263.

(*o*) Model Byelaws, Ministry of Health, Series XIV., Cemeteries (March, 1935). H.M.S.O.

- 3—Every coffin must be at a depth of not less than three feet below the level of the ground, except where the coffin is of perishable material and the soil is of a suitable character, when it must be at a depth of not less than two feet.
- 4—Every coffin must be separated from any other coffin in the same grave by means of a layer of earth not less than six inches in thickness.
- 5—Where a grave is reopened for the purpose of making another interment therein, no human remains interred in the grave may be disturbed or any offensive soil removed.
- 6—Every coffin buried in a vault must, within a period of twenty-four hours, be permanently embedded in and covered with a layer of good cement concrete, not less than six inches in thickness, or be permanently enclosed in a separate cell or receptacle constructed of slate or stone flagging not less than two inches in thickness, properly jointed with cement, or of good brick-work in cement, and in such manner as to prevent, as far as may be practicable, the escape of noxious gas from the interior of the cell or receptacle.
- 7—Graves to be properly covered with turf, or with a proper gravestone or monument, or to be planted with shrubs or other suitable vegetation.
- 8—No person may by any violent or indecent behaviour, prevent, interrupt, or delay the decent and solemn burial of any body.

DISUSED BURIAL GROUNDS

With a view to protecting the public health, the Minister of Health may make representations to the Privy Council for the closing of a burial ground, and an Order may be made closing the burial ground completely, or subject to exceptions or qualifications^(p). It is an offence to erect any building on a disused burial ground, except for enlarging an existing place of worship^(q).

CREMATORIA.

Under section 4 of the Cremation Act, 1902^(r), local authorities are empowered to provide and maintain crematoria. The cremation of human remains is not unlawful, provided it is carried out in such a way as to prevent nuisance^(s). A crematorium may not be constructed within two hundred yards of any dwelling-house, except with the consent of the owner, lessee and occupier thereof, nor within fifty yards of any public highway, nor within the consecrated portion of

^(p) Sect. 2, Burial Act, 1852; 2 Halsbury's Statutes 190.

^(q) Sect. 3, Disused Burial Grounds Act, 1884; 2 Halsbury's Statutes 279.

^(r) 2 Halsbury's Statutes 282.

^(s) *R. v. Price* (1884), 12 Q.B.D. 247; 7 Digest 549, 278.

any burial ground(*t*). It was held, on the very similar language in section 9 of the Burial Act, 1855(*u*), that the term "dwelling-house" does not include the curtilage, and that the distance must be measured from the walls of the dwelling-house(*w*).

The Secretary of State must make regulations governing the maintenance and inspection of crematoria, and the Regulations at present in force were made by the Home Secretary in 1930(*x*). The Regulations provide, *inter alia*, for the appointment of a medical referee and a deputy medical referee, who must be registered medical practitioners of not less than five years standing, and, if otherwise qualified, a medical officer of health may be appointed. If the medical referee is satisfied as to the cause of death in the case of a person who dies of plague, cholera or yellow fever on board ship or in a hospital provided under the Public Health Act, he may dispense with any of the requirements of Regulations 4-9 or 12(*y*).

MORTUARIES AND POST-MORTEM ROOMS.

A mortuary or post-mortem room may be provided by a local authority or a parish council in accordance with section 198 of the Act of 1936, *infra*.

Section 198, Public Health Act, 1936.—Provision of mortuaries and post-mortem rooms.

(1) A local authority or a parish council may, and if required by the Minister shall, provide—

- (a) a mortuary for the reception of dead bodies before interment ;
- (b) a post-mortem room for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other duly authorised authority ;

and may make byelaws with respect to the management, and charges for the use, of any such place provided by them.

(2) A local authority or parish council may provide for the interment of any dead body which may be received into their mortuary.

In the case of a parish without a parish council, the county council may confer powers on a parish meeting to enable a mortuary or post mortem room to be provided(*z*).

(*t*) Sect. 5, Cremation Act, 1902 ; 2 Halsbury's Statutes 282.

(*u*) 2 Halsbury's Statutes 221.

(*w*) *Wright v. Wallasey Local Board* (1887), 18 Q.B.D. 783 ; 7 Digest 549, 273.

(*x*) S.R. and O., 1930, No. 1016 ; 23 Halsbury's Statutes 15.

(*y*) Reg. 14, S.R. and O., 1930, No. 1016 ; 23 Halsbury's Statutes 19.

(*z*) Sect. 273, Local Government Act, 1933 ; 26 Halsbury's Statutes 451.

The Ministry of Health have issued a Model Series of Byelaws^(a) regarding mortuaries, which provide that all persons admitted to a mortuary must conduct themselves with decency and propriety. Upon receipt of a notice, either from the medical officer of health or the clerk to the council, that a body deposited in a mortuary is in such a state of decomposition as to cause a nuisance, the person who caused the body to be placed in the mortuary, must remove it for interment or cremation, or place it in an air-tight coffin, as quickly as possible. Any shell used for conveying a body to a mortuary, must be removed, if the same shell is not used for the removal of the body from the mortuary. If the body is of a person who has died of an infectious disease, the certificate of the medical officer of health must be obtained to the effect that the shell has been effectually disinfected, before it is removed from the mortuary.

The Ministry of Health make the following suggestions with regard to the administrative arrangements in connection with mortuaries^(b) :—

No difficulty should be placed in the way of receiving a body at any hour of the day or night, although a notice might be affixed to the entrance gate requesting persons to abstain, except of emergency, from applying for the admission of bodies during certain specified hours.

A caretaker should be in charge of the premises, and his duties should comprise the general management of the mortuary, the maintenance of cleanliness, decency, and good order, and the keeping of all necessary books or registers.

It will probably be found expedient to require the caretaker to ascertain and record the following particulars concerning each corpse received upon the premises :—

- (a) Full name of the deceased ;
- (b) Sex ;
- (c) Age ;
- (d) Cause of death ;
- (e) Number of house and name of street or other description of the place whence the body has been brought ;
- (f) Name and address of the person by whose order the body has been brought ; and
- (g) Date of the removal of the body for burial.

It should, however, be clearly understood by the caretaker that he is not justified in refusing to admit a corpse on the ground that these particulars cannot be given when the application for admission is made.

Enough shells of different sizes should be kept at some suitable place in charge of the caretaker, and he should be empowered to

(a) Model Byelaws, Ministry of Health, Series XV., Mortuaries (1935). H.M.S.O.

(b) *Ibid*, p. 4.

lend them to undertakers or other responsible persons for the conveyance of bodies to the mortuary.

Each shell should be constructed of strong wood, painted externally. The interior of the shell and the inner surface of its cover should be lined with tinned copper.

Each shell after being used and before being again deposited in storage should be thoroughly cleansed by the caretaker. When the shell has contained the body of a person who has died of an infectious disease, it should be effectually disinfected after being used, and before being so deposited.

No dead body should be received upon the premises unless it is enclosed in a shell or coffin.

With regard to the structural arrangements of a new or adapted mortuary, the Ministry offer the following suggestions(c) :—

The building should be a substantial structure of brick, stone, or other hard and incombustible material.

Every chamber intended for the reception of corpses should be on the ground or basement floor, it should be lofty, and there should be a ceiling, or, if it be open to the roof, there should be a double roof with a space of eight inches at least between the outer and inner coverings or with an intervening layer of felt or other non-conducting material.

Lantern lights, skylights, or roof lights should be avoided. Windows on the south side should not be used, and, if it is necessary to place windowson the east or west sides, external louvre blinds should be provided.

Ventilating openings should be protected for the exclusion of flies, vermin, etc., and so arranged as to be removable for cleansing.

The entrance to the chamber should be direct, without the intervention of any passage.

The number of chambers should be at least two, so that one may be appropriated exclusively for the bodies of persons who have died of infectious disease, and it may be expedient to place these chambers as far apart as practicable, so that persons visiting the chamber used for the bodies of those who have died of non-infectious disease may have no reason to fear infection.

Water should be laid on so as to be drawn from a tap within the chamber. No drain should be within the chamber, but the floor should fall to a channel leading to a trapped gully on the outside of the building.

PROVISIONS WITH RESPECT TO DEAD BODIES.

The Minister of Health may, in accordance with section 161 of the Act of 1936(d), make regulations, with the concurrence of the Secretary of State, with respect to the disposal of dead bodies otherwise than by burial or cremation, as

(c) Model Byelaws, Ministry of Health, Series XV., Mortuaries (1935), H.M.S.O., p. 5.

(d) 29 Halsbury's Statutes 438.

to the period of time a body may be retained after death on any premises, or with respect to embalming or preservation, which may be necessary in the interests of public health or public safety.

Section 162 of the Act of 1936, *infra*, empowers a magistrate to order the removal of a dead body to a mortuary or for immediate burial, where the medical officer of health or other medical practitioner on the staff of the local authority, certifies that it is in the interests of the public health to do so.

Section 162, Public Health Act, 1936.—Power of justice to order dead body to be removed to mortuary, or buried forthwith.

- (1) If a justice of the peace (acting, if he deems it necessary, *ex parte*) is satisfied, on a certificate of the medical officer of health of the district in which a dead body lies, or on a certificate of any other registered medical practitioner on the staff of the local authority of that district, that the retention of the body in any building would endanger the health of the inmates or that building, or of any adjoining or neighbouring building, he may order that the body be removed by, and at the cost of, the local authority to a mortuary, and that the necessary steps be taken to secure that it is buried within a time limited by the order or, if he considers immediate burial necessary, immediately :

Provided that relatives or friends of the deceased person shall be deemed to comply with an order so made if they cause the body to be cremated within the time limited by the order, or, as the case may be, immediately.

- (2) Unless relatives or friends of the deceased person undertake to, and do, cause the body to be buried or cremated within the time limited by the order or, as the case may be, immediately, it shall be the duty of the relieving officer of the district within which the body was lying at the time of the application to the justice to cause the body to be buried, and any expenses reasonably incurred by him in so doing may be recovered summarily by the council whose officer he is from any person legally liable to pay the expenses of the burial.
- (3) An order under this section shall be an authority to any officer named therein to do all acts necessary for giving effect to the order.

It should be noted that this section applies to all cases and not only to the bodies of persons dying of infectious diseases. The cost of removal of the dead body must be borne by the local authority but the cost of burial or cremation falls upon the person legally liable to pay the funeral expenses.

Where a person dies in hospital from a notifiable disease(*e*), the provisions of section 163, *infra*, may be applied.

(*e*) Defined in sect. 343, Public Health Act 1936 ; see *post*, p. 418.

Section 163, Public Health Act, 1936.—Restrictions in certain cases on removal of bodies of persons dying in hospital.

- (1) If a person dies in a hospital while suffering from a notifiable disease and the medical officer of health of the district, or some other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the spread of infection, that the body should not be removed from the hospital except for the purpose of being taken direct to a mortuary or being forthwith buried or cremated, it shall not be lawful for any person to remove the body from the hospital except for such a purpose.
- (2) In any such case as aforesaid, when the body is removed for the purpose of burial or cremation from the hospital or any mortuary to which it has been taken, it shall forthwith be taken direct to some place of burial or crematorium, and there buried or cremated.
- (3) A person who contravenes any provision of this section shall be liable to a fine not exceeding five pounds.

Section 164 of the Act of 1936(*f*) requires every person in charge of premises in which is lying the body of a person who has died while suffering from a notifiable disease, to take such steps as may be reasonably practicable to prevent persons coming unnecessarily into contact with, or proximity to, the body, and section 165 of the Act of 1936(*g*) prohibits the holding of a wake over the body of such a person.

The expression "coming into contact with a body" in section 164, *supra*, is not limited to actual physical touching but includes such close proximity as to involve risk of infection(*h*).

It is a nuisance at common law to expose a dead body in a public highway(*i*). It is also a nuisance to retain unburied a corpse until decomposition sets in and thereby endanger the health and cause offence to other persons, although it was held in a case where it was alleged that by reason of decomposition of a corpse there was great danger to persons inhabiting the house where the body was lying, that the counts were bad, as they did not allege a nuisance to the public but only a private nuisance(*k*).

(*f*) 29 Halsbury's Statutes 439.

(*g*) 29 Halsbury's Statutes 440.

(*h*) *Kitchen v. Douglas* (1915), 85 L.J.K.B. 462; 38 Digest 201, 365.

(*i*) *R. v. Clark* (1883), 15 Cox, C.C. 171; 15 Digest 747, 8066.

(*k*) *R. v. Byers* (1907), 71 J.P. 205; 7 Digest 522, 12.

PART IV.

SANITATION OF SPECIAL PREMISES.

CHAPTER 14.—FACTORIES AND WORKPLACES.

The supervision of factories is partly in the hands of the Factory Inspectors of the Ministry of Labour and National Service and partly in the hands of local authorities, who are termed "district councils," and include the councils of county boroughs, boroughs, urban and rural districts, and the term "district council" in this chapter includes a reference to those authorities. The supervision of workplaces is carried out by district councils under the provisions of the Public Health Act, 1936(a).

Since the passage of the Factories Act, 1937, the factory inspectorate have been transferred to the Ministry of Labour and National Service. References in the Act of 1937 to the Secretary of State should now read Minister of Labour and National Service(b).

District councils are only concerned with certain matters affecting factories, many of the powers and duties relating thereto are dealt with exclusively by the Ministry of Labour and National Service and the Factory Inspectors, and have nothing to do with district councils and they are not referred to in detail in this chapter.

District councils are concerned with the enforcement of a few of the provisions of the Factories Act, 1937(c), and some of the provisions relating to factories and workplaces contained in the Act of 1936.

The Factories Act applies to factories belonging to the Crown, but the powers and duties of the district councils are administered by the Factory Inspectors, and local authorities have no powers with regard to these factories(d).

The Minister of Labour and National Service is empowered to exempt from the provisions of the Factories Act, 1937, by

(a) See in particular, sect. 92 (1)(e); 29 Halsbury's Statutes 395; and sect. 46; *ibid*, 360, and see *ante*, p. 219, and *post*, p. 331.

(b) See Defence (Functions of Ministers) Regulations, 1941; S.R. and O., 1941, No. 2057, Reg. No. 2.

(c) 30 Halsbury's Statutes 201.

(d) Sect. 150, Factories Act, 1937; 30 Halsbury's Statutes 295; and see *ante*, p. 76.

order, to such extent, during such period and subject to such conditions as may be specified in the order,—

- (a) any particular premises or operations or class of premises or operations ;
- (b) any class of machinery, plant, or process ;

if he is satisfied in either case that it is expedient so to do in the interests of the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community^(e).

DEFINITIONS.

The definition of “ factory ” is contained in section 151 of the Factories Act, 1937^(f), and is as follows—

Section 151, Factories Act, 1937—Interpretation of expression “ factory.”

- (1) Subject to the provisions of this section, the expression “ factory ” means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely :—

- (a) the making of any article or of part of any article ; or
- (b) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking up or demolition of any article ; or
- (c) the adapting for sale of any article ;

being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control :

And (whether or not they are factories by reason of the foregoing definition) the expression “ factory ” also includes the following premises in which persons are employed in manual labour, that is to say :—

- (i) any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken up ;
- (ii) any premises in which the business of sorting any articles is carried on as a preliminary to the work carried on in any factory or incidentally to the purposes of any factory ;
- (iii) any premises in which the business of washing or filling bottles or containers or packing articles is carried on incidentally to the purposes of any factory ;
- (iv) any premises in which the business of hooking, plaiting, lapping, making-up or packing of yarn or cloth is carried on ;

^(e) Defence (General) Regulations, 1939, S.R. and O., 1939, No. 927 ; Reg. No. 59.

^(f) 30 Halsbury's Statutes 295 *et seq.*

- (v) any laundry carried on as ancillary to another business, or incidentally to the purposes of any public institution ;
 - (vi) any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being any premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out ;
 - (vii) any premises in which printing by letterpress, lithography, photogravure, or other similar process, or book-binding is carried on by way of trade or for purposes of gain or incidentally to another business so carried on ;
 - (viii) any premises in which the making, adaptation or repair of dresses, scenery or properties is carried on incidentally to the production, exhibition or presentation by way of trade or for purposes of gain of cinematograph films or theatrical performances, not being a stage or dressing-room of a theatre in which only occasional adaptations or repairs are made ;
 - (ix) any premises in which the business of making or mending nets is carried on incidentally to the fishing industry ;
 - (x) any premises in which mechanical power is used in connection with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain ;
 - (xi) any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain, so, however, that the employment at any such premises of theatrical performers within the meaning of the Theatrical Employers Registration Act, 1925, and of attendants on such theatrical performers shall not be deemed to be employment in a factory ;
 - (xii) any premises in which articles are made or prepared incidentally to the carrying on of building operations or works of engineering construction, not being premises in which such operations or works are being carried on ;
 - (xiii) any premises used for the storage of gas in a gasholder having a storage capacity of not less than five thousand cubic feet.
- (2) Any line or siding (not being part of a railway or tramway) which is used in connection with and for the purposes of a factory, shall be deemed to be part of the factory ; if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding shall be deemed to be a separate factory.
- (3) A part of a factory may, with the approval in writing of the chief inspector, be taken to be a separate factory and two or more factories may, with the like approval, be taken to be a single factory.

- (4) Any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace of a factory if the persons working therein were in the employment of the owner or occupier, shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace not being a tenement factory or part of a tenement factory, the provisions of this Act shall apply as if the owner or occupier of the workplace were the occupier of the factory and the persons working therein were persons employed in the factory.
- (5) No premises in or adjacent to and belonging to a quarry or mine being premises in which the only process carried on is a process ancillary to the getting, dressing or preparation for sale of minerals shall be deemed to be a factory.
- (6) Where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act, but shall, if otherwise it would be a factory, be deemed to be a separate factory.
- (7) Premises shall not be excluded from the definition of a factory by reason only that they are open-air premises.
- (8) Where the Secretary of State by regulations so directs as respects all or any purposes of this Act, different branches or departments of work carried on in the same factory shall be deemed to be different factories.
- (9) Any premises belonging to or in the occupation of the Crown or any municipal or other public authority shall not be deemed not to be a factory, and building operations or works of engineering construction undertaken by or on behalf of the Crown or any such authority shall not be excluded from the operation of this Act, by reason only that the work carried on thereat is not carried on by way of trade or for purposes of gain.

It should be noted that for the purposes of the Act of 1937, a factory is not deemed to be a factory in which mechanical power is used by reason only that mechanical power is used for the purpose of heating, ventilating or lighting the workrooms or other parts of the factory^(g).

It will be observed that the distinction between textile and non-textile factories, workshops, laundries and other premises affected by former Factory Acts, which has been long established, has now been abolished. In the Act of 1937, premises covered by the definition in section 151, *supra*, are known as factories throughout the Act and there are no distinctions as hitherto.

Numerous cases have been decided as to what constitutes "by way of trade or for purposes of gain," both under the Factories Acts and in connection with the derating of certain industrial hereditaments under the Local Government Act, 1929^(h). The

(g) Sect. 152(3), Factories Act, 1937; 30 Halsbury's Statutes 300.

(h) 10 Halsbury's Statutes 883.

general effect of the more recent decisions seems to be that the expression is not restricted to the putting of the actual products upon the market, as was previously considered to be the case⁽ⁱ⁾, but that it also includes the manufacture of articles to be employed in carrying on a trade which consists in the supply, not of goods, but of services for purposes of gain^(h). A technical institute is not a factory within the meaning of section 151(9), *supra*^(l). In another case^(m), it was held that the kitchen of a mental hospital in which an electrically driven meat mincing machine was used was not a factory.

Subsection (1) of section 152 of the Factories Act, 1937, defines the term "tenement factory" as follows:—

"Tenement factory" means any premises where mechanical power from any prime mover within the close or curtilage of the premises is distributed for use in manufacturing processes to different parts of the same premises occupied by different persons in such manner that those parts constitute in law separate factories.

"Workplace."—The following definition occurs in section 343 of the Act of 1936—

"Workplace" does not include a factory or workshop, but save as aforesaid includes any place in which persons are employed otherwise than in domestic service.

Although the Ministry of Health expressed the view in 1929⁽ⁿ⁾ that the term "workplace" includes offices, there has always been considerable doubt on this point up to the passage of the Act of 1936. The definition in section 343, *supra*, was drafted expressly to include offices of every kind, but it should be noted that it applies to the Act of 1936 only.

General Definitions.—Section 152 of the Factories Act, 1937^(o), defines several general terms, including, *inter alia*,—

(i) See *Nash v. Hollinshead* (1901), 1 K.B. 700; 24 Digest 901, 29. *Curtis v. Shinner* (1906), 70 J.P. 272; 24 Digest 903, 40.

(h) See *Moon v. L.C.C.*, [1931] A.C. 151; Digest Supp.; *Potteries Electric Traction Co., Ltd. v. Bailey*, [1931] 1 K.B. 385, C.A.; Digest Supp.; *Barton v. Union Lighterage Co., Ltd.*, [1931] 1 K.B. 385, at pp. 414, 499; Digest Supp.; *Barton v. Twining and Co., Ltd.*, [1931] 1 K.B. 385, at pp. 475, 500; Digest Supp.

(l) *Weston v. London County Council*, [1941] 1 K.B. 608; [1941] 1 All E.R. 555.

(m) *Wood v. London County Council*, [1941] 2 K.B. 232; [1941] 2 All E.R. 230.

(n) "On the State of the Public Health," Annual Report of the Chief Medical Officer to the Ministry of Health for the year 1928 (1929, H.M.S.O.), p. 233.

(o) 30 Halsbury's Statutes 298.

- "Bakehouse" means any place in which bread, biscuits or confectionery is or are baked by way of trade or for purposes of gain ;
- "Building operation" means the construction, structural alteration, repair or maintenance of a building (including re-pointing, re-decoration and external cleaning of the structure), the demolition of a building, and the preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction within the meaning of this Act ;
- "Owner" means the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person or who would so receive the rackrent if the premises were let at a rackrent ;
- "Prime mover" means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source ;
- "Sanitary conveniences" includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience ; and
- "Woman" means a woman who has attained the age of eighteen.

HEALTH PROVISIONS APPLICABLE TO FACTORIES AND WORKPLACES.

The sanitary condition of factories (as defined in section 151 of the Factories Act, 1937 (see *ante*, p. 313)) is governed by Part I of the Act of 1937(*p*).

ENFORCEMENT OF HEALTH PROVISIONS CONTAINED IN PART I.

The provisions of section 7 of the Act of 1937 (*post*, p. 329) relative to sanitary conveniences at *all* factories are enforced by district councils ; the provisions of Part I of the Act relating to cleanliness (section 1, *post*, p. 319), overcrowding (section 2, *post*, p. 322), temperature (section 3, *post*, p. 325), ventilation (section 4, *post*, p. 326), and drainage of floors (section 6, *post*, p. 328), as respects any factory in which mechanical power is *not* used, are enforced by district councils ; provided (a) that in the case of any class or description of factory or parts thereof in respect of which special provision is made by the Act or any order or regulation made thereunder, against a risk of industrial disease or other risk of injury to health, the Minister of Labour may by order direct that the said provisions or any of them shall not be enforced by the district council, and (b) the district council cannot enforce any of the above provisions in respect of premises occupied or used by a railway company for the purposes of their railway or any premises vested in the

owners, trustees, or conservators, acting under powers conferred on them by Parliament, of any dock, harbour or inland navigation and used for the purposes of the dock, harbour or inland navigation(*q*).

For references in any of the provisions of Part I of the Act of 1937 to an inspector of factories, there must, as respects any factory or parts thereof in which that provision is enforceable by a district council, be substituted references to a medical officer of health (*r*). The powers of officers of a district council are contained in section 128 of the Act of 1937 (*post*, p. 348).

With regard to proviso (a) of section 8, *supra*, an Order(*s*) has been made directing that the provisions of sections 1, 2, 3, 4, and 6 of the Act shall not be enforced by a district council as respects factories where mechanical power is not used, in the case of any such factory in respect of which special provision is made by any of the regulations specified in the Schedule to the Order, against risk of injury to health. The Order came into force on 1st July, 1938, and the Regulations detailed in the Schedule are as follows :—

- The Regulations of the 19th June, 1903, for file-cutting by hand(*t*) ;
- The Regulations of the 12th December, 1905, for sorting, willeying, washing, combing and carding of certain materials(*u*) ;
- The Regulations of the 20th December, 1907, for processes involving the use of horsehair from China, Siberia or Russia(*w*) ;
- The Regulations of the 20th June, 1908, for the casting of brass (*x*) ;
- The Regulations of the 18th December, 1908, for the vitreous enamelling of metal or glass(*y*) ;
- The Regulations of the 30th June, 1909, for the tinning of metal hollow-ware, iron drums, and harness furniture(*z*) ;
- The Regulations of the 2nd January, 1913, for the manufacture and decoration of pottery(*a*) ;
- The Indiarubber Regulations, 1922(*b*) ;
- The Chemical Works Regulations, 1922(*c*) ;
- The Electric Accumulator Regulations, 1922(*d*) ;
- The Vehicle Painting Regulations, 1926(*e*) ;

(*q*) Sect. 8(2) (b), Factories Act, 1937 ; 30 Halsbury's Statutes 211.

(*r*) *Ibid*, sect. 8(4) ; *ibid*.

(*s*) The Local Authorities (Transfer of Enforcement) Order, 1938 ; S.R. and O., 1938, No. 488.

(*t*) S.R. and O. Rev., 1904, Factory and Workshop, p. 61 (1903, No. 507).

(*u*) S.R. and O., 1905, No. 1293.

(*w*) S.R. and O., 1907, No. 984.

(*x*) S.R. and O., 1908, No. 484.

(*y*) S.R. and O., 1908, No. 1258.

(*z*) S.R. and O., 1909, No. 720.

(*a*) S.R. and O., 1913, No. 2.

(*b*) S.R. and O., 1922, No. 329.

(*c*) S.R. and O., 1922, No. 731.

(*d*) S.R. and O., 1925, No. 28.

(*e*) S.R. and O., 1926, No. 299.

The Chromium Plating Regulations, 1931(f) ;
The Asbestos Industry Regulations, 1931(g) ;
The Pottery (Silicosis) Regulations, 1932(h).

Although the health provisions are enforced by the factory inspectors in all cases where mechanical power is used, it must be remembered that a factory inspector must give notice in writing to the district council in any case where he finds any act or default in relation to any drain, sanitary convenience, water supply, nuisance, or other matter in a factory which is liable to be dealt with by the district council under Part I of the Act of 1937, or under the Public Health Acts. It is the duty of the district council to take the necessary steps to deal with the matter and to notify the factory inspector of the result of their action. If the council fails, within a period of one month, to deal with the matter, the factory inspector may act in default and may recover from the council any expenses incurred in so doing(i).

It should be made clear, therefore, that district councils are only concerned with the provision of sanitary conveniences at all factories ; the enforcement of the health provisions in Part I of the Act of 1937 previously detailed ; and the enforcement of the provisions of the Public Health Acts relating to the matters mentioned in the previous paragraph.

District councils are concerned, however, with the following matters at factories :—

- i—*Means of escape in case of fire*—sections 34 and 35, Factories Act, 1937 (see *post*, p. 341) ; and
- ii—*Smoke nuisances*—Part III, Public Health Act, 1936 (see *ante*, p. 268).

CLEANLINESS.

(a) **Factories.**—The cleanliness of factories is governed by section 1 of the Factories Act, 1937, *infra*—

Section 1, Factories Act, 1937.—Cleanliness.

Every factory shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance, and, without prejudice to the generality of the foregoing provision—

- (a) accumulations of dirt and refuse shall be removed daily by a suitable method from the floors and benches of work-rooms, and from the staircases and passages ;

(f) S.R. and O., 1931, No. 455.

(g) S.R. and O., 1931, No. 1140.

(h) S.R. and O., 1932, No. 393.

(i) Sect. 9, Factories Act, 1937 ; 30 Halsbury's Statutes 211.

- (b) the floor of every workroom shall be cleaned at least once in every week by washing or, if it is effective and suitable, by sweeping or other method ;
- (c) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides and tops of passages and stair-case shall—
 - (i) where they have a smooth impervious surface, at least once in every period of fourteen months be washed with hot water and soap or other suitable detergent or cleaned by such other method as may be approved by the inspector for the district ;
 - (ii) where they are kept painted with oil paint or varnished, be repainted or revarnished at least once in every period of seven years, and at least once in every period of fourteen months be washed with hot water and soap or other suitable detergent or cleaned by such other method as may be approved by the inspector for the district ;
 - (iii) in other cases be kept whitewashed or colour-washed, and the whitewashing or colourwashing shall be repeated at least once in every period of fourteen months :

Provided that—

- (i) except where the inspector for the district in any case otherwise requires, the provisions of paragraph (c) of this section shall not apply to any factory where mechanical power is not used and less than ten persons are employed ; and
- (ii) where it appears to the Secretary of State that in any class or description of factory or parts thereof any of the foregoing provisions of this section are not required for the purpose of keeping the factory in a clean state, or are by reason of special circumstances inappropriate or inadequate for such purpose, he may, if he thinks fit, by order direct that those provisions shall not apply to factories, or parts of factories, of that class or description or shall apply as varied by the order.

It should be noted that, except where the medical officer of health otherwise requires, the provisions of paragraph (c), *supra*, do not apply to any factory where mechanical power is not used and less than ten persons are employed. With reference to proviso (ii), an Order^(k) has been made exempting from the provisions of paragraph (c) of section I, *supra*, the classes or descriptions of factories or parts of factories specified in the Schedule to the Order, provided that such paragraph (c) continues to apply—

- (i) as respects factories or parts of factories specified in Part A of the said Schedule, to workrooms in which the amount of cubic space allowed for every person employed in the room is less than 500 cubic feet ;

(k) The Factories (Cleanliness of Walls and Ceilings) Order, 1938 ; S.R. and O., 1938, No. 487.

- (ii) as respects factories or parts of factories specified in Part B of the said Schedule, to workrooms in which the amount of cubic space allowed for every person employed in the room is less than 2,500 cubic feet ;
- (iii) to engine-houses, fitting shops, messrooms, cloakrooms, lavatories, and sanitary conveniences ; and
- (iv) to such parts of walls, sides and tops of passages and staircases as are less than 20 feet above the floor or stair.

The classes of factories listed in the Schedule are as follows—

Part A—

Blast furnaces ;
 Iron mills ;
 Copper mills ;
 Stone, slate and marble works ;
 Brick and tile works in which unglazed bricks or tiles are made ;
 Cement works ;
 Chemical works ;
 Gas works ;

The following parts of factories :

Rooms used for the storage of articles in which no process is regularly carried on ;
 Parts in which dense steam is continuously evolved in the process ;
 Parts in which pitch, tar, or like material is manufactured or is used to a substantial extent, except in brush works ;
 The part of a glass factory known as the glass house ;
 Rooms in which graphite is manufactured or is used to a substantial extent in any process ;
 Parts in which coal, coke, oxide of iron, ochre, lime, or stone is crushed or ground ;
 Parts of walls, partitions, ceilings or tops of rooms which are at least 20 feet above the floor ; and
 Ceilings or tops of rooms in print works, bleach works, or dye works, with the exception of finishing rooms or warehouses.

Part B—

Shipbuilding works ;
 Gun factories ;
 Engineering works ;
 Electric generating or transforming stations ;
 Frame dressing rooms of lace factories ;
 Foundries other than foundries in which brass casting is carried on ;
 Factories in which sugar is refined or manufactured ;
 Coach and motor body works ; and
 Those parts of factories where unpainted or unvarnished wood is manufactured.

Sub-paragraph (iii) of paragraph (c) of section 1, *supra*, is modified in respect of workrooms in which lace making by machine is carried on and in which the amount of cubic space allowed for every person employed in the room is not less than 800 cubic feet, the period between whitewashing or colour-washing is extended from fourteen to twenty-six months, pro-

vided that the walls, etc., are thoroughly swept not less than ten or more than fourteen months after they were last white-washed or colourwashed, and particulars showing the dates of such sweeping are entered in the general register. Sub-paragraph (iii) of paragraph (c) does not apply in the case of walls, partitions, sides, ceilings or tops which have been painted with at least two coats of a washable water paint as defined in the Order(*k*) and which are repainted with at least one coat of such paint at least once in every three years and are washed down at least once in every period of fourteen months.

If the medical officer of health is satisfied that, notwithstanding the provisions of the Order(*k*), any part of a factory to which the provisions of paragraph (c) of section 1 of the Act of 1937 do not apply, or apply as varied by the Order, is not being kept in a clean state, he may, by written notice, require the occupier to whitewash or colourwash, wash, or paint or varnish the same. If the occupier fails to comply with such notice within a period of two months, the modifications or exemptions made by the Order cease to apply to such part of such factory(*l*). In accordance with the provisions of section 116 of the Act of 1937 (see *post*, p. 347), the prescribed particulars as to the washing, white-washing or colour washing, painting or varnishing of a factory, must be recorded in the register required to be kept in each factory.

(b) **Workplaces.**—Any workplace which is not kept clean or not kept free from noxious effluvia, is a statutory nuisance(*m*), subject to the provisions of the Public Health Act, 1936, relative to nuisances (see *ante*, p. 219). In cases of this kind, an authority is entitled to serve an abatement notice and, if necessary, apply to the court for an abatement order.

OVERCROWDING.

(a) **Factories.**—Section 2 of the Factories Act, 1937, *infra*, details the provisions relative to the overcrowding of factories.

Section 2, Factories Act, 1937.—Overcrowding.

- (1) A factory shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein.
- (2) Without prejudice to the generality of the foregoing provision, a factory shall be deemed to be so overcrowded as aforesaid,

(*k*) The Factories (Cleanliness of Walls and Ceilings) Order, 1938; S.R. and O., 1938, No. 487.

(*l*) *Ibid.*, para. 5.

(*m*) See sect. 92, Public Health Act, 1936; 29 Halsbury's Statutes 394; and see *ante*, p. 219.

if the number of persons employed at a time in any workroom is such that the amount of cubic space allowed for every person employed in the room is less than four hundred cubic feet :

Provided that, if the chief inspector is satisfied that owing to the special conditions under which the work is carried on in any workroom in which explosive materials are manufactured or handled, the application of this subsection to that workroom would be inappropriate or unnecessary, he may by certificate except the workroom from those provisions subject to any conditions specified in the certificate.

- (3) As respects any room used as a workroom at the date of the passing of this Act, the last foregoing subsection shall, for the period of five years after that date and, if before the expiration of that period effective and suitable mechanical ventilation has been provided in the room, for a further period of five years, have effect as if for the reference therein to four hundred cubic feet there were substituted a reference to two hundred and fifty cubic feet :

Provided that this subsection shall cease to apply to the room—

- (a) if the room passes into the occupation of any person other than the person who was the occupier thereof at the passing of this Act, or his successor in the same business ; or
 - (b) if, during the first of the said periods, the inspector for the district requires the provision of effective and suitable mechanical ventilation in the room and default is made in complying with the requirement ; or
 - (c) if, during the second of the said periods or in a case where it has been provided in pursuance of the inspector's requirement during either of those periods, the effective and suitable mechanical ventilation provided in the room ceases to be maintained.
- (4) The Secretary of State may make regulations, as respects any class or description of factory or parts thereof or any process, increasing the number of cubic feet which must under this section be allowed for every person employed in a workroom.
- (5) In calculating, for the purpose of this section, the amount of cubic space in any room, no space more than fourteen feet from the floor shall be taken into account, and, where a room contains a gallery, the gallery shall be treated for the purposes of this section as if it were partitioned off from the remainder of the room and formed a separate room.
- (6) Unless the inspector for the district otherwise allows, there shall be posted in the workroom a notice specifying the number of persons who, having regard to the provisions of this section, may be employed in that room.

It will be observed that although subsection (2) requires a minimum of 400 cubic feet per person in a factory, rooms in use as workrooms on 31st July, 1937, which remained in the occupation of the same person or his successor in the same business for a period of five years (*i.e.* until 31st July, 1942), needed to provide only 250 cubic feet per person, unless the inspector of factories had required the provision of mechanical ventila-

tion and it had not been installed, when the minimum of 400 cubic feet was necessary. If, before the 31st July, 1942, effective and suitable mechanical ventilation was provided for a workroom, the minimum of 250 cubic feet per person may be continued for a further period of five years. The minimum of 400 cubic feet per person will be operative in all factories on the 31st July, 1947.

Although no Regulations(*n*) have yet been made, as provided by subsection (4) of section 2, *supra*, section 159 of the Act of 1937(*o*) continues in force regulations and orders made under repealed statutes. Accordingly, the following are still in operation :—

- | | |
|--|--|
| (i) Factories in which the manufacture or repair of electric accumulators or parts thereof is carried on(<i>p</i>) ; | 500 cubic feet per person (height above 12 feet not to be taken into account). |
| (ii) Factories in which vitreous enamelling of metal or glass is carried on(<i>q</i>) ; | 500 cubic feet per person (height above 14 feet not to be taken into account). |
| (iii) Spinning of artificial silk(<i>r</i>). | 1,000 cubic feet. |
| (iv) Flax, jute and hemp works(<i>s</i>). | 1,000 cubic feet where the occupiers desire to take advantage of a special exception as to meal times. |
| (v) Bakehouses underground(<i>t</i>). | 500 cubic feet. |
| (vi) Bakehouses where work is carried on at night by means of artificial light other than electricity(<i>t</i>). | 400 cubic feet during the period from 9 p.m. to 6 a.m. |

In calculating the amount of cubic space available in workrooms, it should be remembered that space above fourteen feet must be excluded. This provision appeared for the first time in the Act of 1937, and is in accordance with modern conceptions as to ventilation. It should be noted that whereas under the repealed Act of 1901 the notice specifying the number of persons permitted to work in a factory was recorded upon the Abstract of the Act (see *post*, p. 347), it is now necessary to place a notice, in the prescribed form (Notice No. 46), in each workroom showing the number of workers permitted to be employed therein.

(*n*) Power to make regulations is contained in sect. 129, Factories Act, 1937 ; 30 Halsbury's Statutes 288.

(*o*) 30 Halsbury's Statutes 302.

(*p*) The Electric Accumulator Regulations, 1925 ; S.R. and O., 1925, No. 28.

(*q*) The Vitreous Enamelling of Metal or Glass Regulations, 1908 ; S.R. and O., 1908, No. 1258.

(*r*) Order dated 20th July, 1899 ; S.R. and O., 1899.

(*s*) Order dated 6th September, 1899 ; S.R. and O., 1899.

(*t*) Order dated 30th December, 1903 ; S.R. and O., 1903, No. 1157.

(b) **Workplaces.**—Any workplace which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein, is a statutory nuisance^(u), subject to the provisions of the Public Health Act, 1936, relative to nuisances (see *ante*, p. 219). In cases of this kind an authority is entitled to serve an abatement notice and, if necessary, to apply to the court for an abatement order.

TEMPERATURE.

(a) **Factories.**—The temperature in factories is controlled by section 3 of the Act of 1937, *infra*.

Section 3, Factories Act, 1937.—Temperature.

- (1) Effective provision shall be made for securing and maintaining a reasonable temperature in each workroom, but no method shall be employed which results in the escape into the air of any workroom of any fume of such a character and to such extent as to be likely to be injurious or offensive to persons employed therein.
- (2) In every workroom in which a substantial proportion of the work is done sitting and does not involve serious physical effort, a temperature of less than sixty degrees shall not be deemed, after the first hour, to be a reasonable temperature while work is going on, and at least one thermometer shall be provided and maintained in a suitable position in every such workroom.
- (3) The Secretary of State may, by regulations, for factories or for any class or description of factory or parts thereof, prescribe a standard of reasonable temperature (which may vary the standard prescribed by the last foregoing subsection for sedentary work) and prohibit the use of any methods of maintaining a reasonable temperature which, in his opinion, are likely to be injurious to the persons employed, and direct that thermometers shall be provided and maintained in such places and positions as may be specified.

The nature of the work and the time of year will influence what is a reasonable temperature in any particular factory. It should be noted that subsection (2) specifies a minimum of sixty degrees^(x) after the first hour where a substantial proportion of the work is done sitting and does not involve serious physical effort. Section 55 of the Act of 1937^(y) requires effective steps to be taken, by means of a fan or otherwise, to regulate the temperature in every ironing room of a laundry, and to carry away the steam in every washhouse. This section applies to every laundry, irrespective of whether or not

^(u) See sect. 92, Public Health Act, 1936; 29 Halsbury's Statutes 394; and see *ante*, p. 219.

^(x) Fahrenheit; see sect. 152, Factories Act, 1937; 30 Halsbury's Statutes 298.

^(y) 30 Halsbury's Statutes 242.

mechanical power is used. The provision of thermometers in all factories was new in the Act of 1937; hitherto they were required only in those factories included in an Order by the Secretary of State. Special provisions relating to temperature are contained in the regulations dealing with cotton cloth factories(*z*), flax spinning(*a*), merino, cashmere and wool(*b*). and potteries(*c*).

Although no Regulations(*d*) have yet been made, as provided by subsection (3) of section 3, *supra*, section 159 of the Act of 1937(*e*) continues in force regulations and orders made under repealed statutes. Accordingly, regulations are still in force relative to the following processes:—

- (i) weaving of cotton cloth(*f*);
- (ii) spinning of flax and tow(*a*);
- (iii) spinning of hemp and jute(*g*);
- (iv) pottery(*c*);
- (v) woodworking(*h*); and
- (vi) wool sorting(*b*).

(b) **Workplaces.**—There are no special provisions, either in the Factories Act, 1937, or the Public Health Act, 1936, relating to the temperature of workplaces.

VENTILATION.

(a) **Factories.**—Section 4 of the Act of 1937, *infra*, deals with the ventilation of factories.

Section 4, Factories Act, 1937.—Ventilation.

- (1) Effective and suitable provision shall be made for securing and maintaining by the circulation of fresh air in each workroom the adequate ventilation of the room, and for rendering harmless, so far as practicable, all fumes, dust and other impurities that may be injurious to health generated in the course of any process or work carried on in the factory.

(*z*) Cotton Cloth Factories Regulations. Hygrometers Order, 1929; S.R. and O., 1929, No. 1582.

(*a*) Regulations for the Processes of Spinning and Weaving Flax and Tow and the Processes incidental thereto, 1906; S.R. and O., 1906, No. 177.

(*b*) Regulations for the Sorting, Willeying, Washing, Combing, and Carding Wool, Goat Hair and Camel Hair, and Processes incidental thereto, 1905; S.R. and O., 1905, No. 1293.

(*c*) Regulations for the Manufacture and Decoration of Pottery, 1913; S.R. and O., 1913, No. 2.

(*d*) Power to make regulations is contained in sect. 129, Factories Act, 1937; 30 Halsbury's Statutes 288.

(*e*) 30 Halsbury's Statutes 302.

(*f*) The Cotton Cloth Regulations, 1929; S.R. and O., 1929, No. 300.

(*g*) Regulations for the Processes of Spinning and Weaving Hemp or Jute, or Hemp or Jute Tow, and Processes incidental thereto, 1907; S.R. and O., 1907, No. 660.

(*h*) Regulations for the Use of Woodworking Machinery, 1922; S.R. and O., 1922, No. 1166.

- (2) The Secretary of State may, by regulations, prescribe a standard of adequate ventilation for factories or for any class or description of factory or parts thereof.

An Order made in 1902, relating to textile factories (not being cotton cloth factories), in which artificially produced humidity is produced by steaming or other mechanical appliances, and in which special rules or regulations with respect to humidity are not for the time being in force, required a supply, during working hours, of not less than 600 cubic feet of fresh air per hour for each person employed, was revoked in 1940⁽ⁱ⁾. Regulations relating to the following contain provisions relative to ventilation—

- (i) cotton cloth^(k) ;
- (ii) indiarubber^(l) ; and
- (iii) pottery^(m).

All practicable steps must be taken to protect persons employed in a factory in which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed. Where necessary, exhaust appliances must be provided and maintained, as near as possible to the point of origin of the dust or fume or other impurity, so as to prevent it entering the air of any workroom⁽ⁿ⁾. Action can only be taken by the factory inspector and not by the district council.

(b) **Workplaces.**—Any workplace in which sufficient ventilation is not maintained, is a statutory nuisance^(o), subject to the provisions of the Public Health Act, 1936, relative to nuisances (see *ante*, p. 219). In cases of this kind an authority is entitled to serve an abatement notice and, if necessary, apply to the court for an abatement order.

LIGHTING.

(a) **Factories.**—The provisions relative to the lighting of factories are contained in section 5 of the Act of 1937, *infra*.

Section 5, Factories Act, 1937.—Lighting.

- (1) Effective provision shall be made for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of a factory in which persons are working or passing.

⁽ⁱ⁾ Factories (Ventilation) Revocation Regulations, 1940 ; S.R. and O., 1940, No. 275.

^(k) See note (f), p. 326, *ante*.

^(l) Regulations for Certain Processes incidental to the Manufacture of Indiarubber and of Articles and Goods made wholly or partially of Indiarubber, 1922 ; S.R. and O., 1922, No. 329.

^(m) See note (c), p. 326, *ante*.

⁽ⁿ⁾ Sect. 47, Factories Act, 1937 ; 30 Halsbury's Statutes 238.

^(o) See sect. 92, Public Health Act, 1936 ; 29 Halsbury's Statutes 394.

- (2) The Secretary of State may, by regulations, prescribe a standard of sufficient and suitable lighting for factories or for any class or description of factory or parts thereof, or for any process.
- (3) Nothing in the foregoing provisions of this section or in any regulations made thereunder shall be construed as enabling directions to be prescribed or otherwise given as to whether any artificial lighting is to be produced by any particular illuminant.
- (4) All glazed windows and skylights used for the lighting of work-rooms shall, so far as practicable, be kept clean on both the inner and outer surfaces and free from obstruction :

Provided that this subsection shall not affect the whitewashing or shading of windows and skylights for the purpose of mitigating heat or glare.

It should be noted that the factory inspector alone is responsible for the enforcement of this section, district councils not being empowered to do so even in factories where mechanical power is not used. The section is new and regulations were made in 1941(*p*).

(b) **Workplaces.**—There are no special provisions, either in the Factories Act, 1937, or the Public Health Act, 1936, relating to the lighting of workplaces.

DRAINAGE OF FLOORS.

(a) **Factories.**—The drainage of the floors of factories is governed by section 6 of the Act of 1937, *infra*.

Section 6, Factories Act, 1937.—Drainage of floors.

Where any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, effective means shall be provided and maintained for draining off the wet.

It should be noted that this section is of general application. Hitherto, domestic factories and workshops, and men's workshops, were exempt from a similar requirement in the repealed Act of 1901. The regulations affecting flax and tow(*q*) and the grinding of cutlery(*r*) also contain provisions relating to the drainage of floors.

(b) **Workplaces.**—There are no special provisions, either in the Factories Act, 1937, or the Public Health Act, 1936, relating to the drainage of the floors of workplaces.

SANITARY CONVENIENCES.

The provision of sufficient and suitable sanitary conveniences in factories and workplaces is one of the most im-

(*p*) The Factories (Standards of Lighting) Regulations, 1941 ; S.R. and O., 1941, No. 94.

(*q*) S.R. and O., 1906, No. 177.

(*r*) The Grinding of Cutlery and Edge Tools Regulations, 1925 ; S.R. and O. 1925 No. 1089

portant duties of district councils, in connection with these premises. The duty of securing such provision in all factories and workplaces rests entirely upon district councils.

(i)—**New factories and workplaces.**—With regard to the erection of new factories and workplaces, section 43 of the Act of 1936 (see *ante*, p. 139) requires a local authority to reject the building plans unless they show that proper provision will be made for sufficient and satisfactory separate closet accommodation for persons of each sex, or the local authority are satisfied that in the particular circumstances of the case they may properly dispense with the provision of such separate accommodation. Any dispute as to the provision of such sanitary accommodation may be settled by a court of summary jurisdiction in accordance with subsection (2) of section 43, *supra*.

(ii)—**Existing factories.**—The provision of sanitary accommodation in existing factories is enforced by district councils in accordance with section 7 of the Factories Act, 1937, *infra*.

Section 7, Factories Act, 1937.—Sanitary conveniences

- (1) Sufficient and suitable sanitary conveniences for the persons employed in the factory shall be provided, maintained and kept clean, and effective provision shall be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed (except in the case of factories where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodation for persons of each sex.
- (2) The Secretary of State may make regulations determining for factories or for any class or description of factory what is sufficient and suitable provision for the purposes of this section.

It will be observed that subsection (2) of section 7, *supra*, requires the Secretary of State to prescribe by Order what is sufficient and suitable accommodation, and it has been held that he is the sole judge of the matter and the justices have no jurisdiction to inquire into the question(s). In accordance with these provisions, the Sanitary Accommodation Regulations, 1938(*t*), *infra*, were issued.

Sanitary Accommodation Regulations, 1938.

- 1—These Regulations shall apply to all factories as defined in section 151 of the Act and to electrical stations to which subsection (1) of section 103 of the Act applies.
- 2—In cases where females are employed there shall be at least one suitable sanitary convenience for every 25 females.

(s) *Tracey v. Pretty*, [1901] 1 Q.B. 444; 24 Digest 906, 54.

(t) S.R. and O., 1938, No. 611.

- 3—In cases where males are employed there shall be at least one suitable sanitary convenience (not being a convenience suitable merely as a urinal) for every 25 males :
- Provided that in the case of factories where the number of males employed exceeds 100 and sufficient urinal accommodation is also provided it shall be sufficient if there is one such convenience as aforesaid for every 25 males up to the first 100, and one for every 40 thereafter.
- Provided further that in the case of a factory where the number of males employed exceeds 500, not being a factory constructed, enlarged or converted for use as a factory after the 30th June, 1938, it shall be sufficient to provide one such convenience as aforesaid for every 60 males if sufficient urinal accommodation is also provided and if the medical officer of health issues a certificate (which shall be kept attached to the general register so long as it remains in force) that in his opinion the arrangements at the factory are such that this proviso may properly be applied to the factory. Any such certificate shall be liable at any time to be revoked by the medical officer of health by notice in writing.
- 4—In calculating the number of conveniences required by these Regulations, any odd number of persons less than 25, or 40, as the case may be, shall be reckoned as 25 or 40.
- 5—Every sanitary convenience shall be sufficiently ventilated, and shall not communicate with any workroom except through the open air or through an intervening ventilated space :
- Provided that in the case of workrooms in use prior to 1st January, 1903, and mechanically ventilated in such manner that air cannot be drawn into the workroom through the sanitary convenience, an intervening ventilated space shall not be required.
- 6—Every sanitary convenience (other than a convenience suitable merely as a urinal) shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings. Urinals shall be so placed or so screened as not to be visible from other parts of the factory where persons work or pass.
- 7—The sanitary conveniences shall be so arranged as to be conveniently accessible to the persons employed at all times while they are at the factory.
- 8—In cases where persons of both sexes are employed, the sanitary conveniences for each sex shall be so placed or so screened that the interior shall not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to work or pass ; and, if the conveniences for one sex adjoin those for the other sex, the approaches shall be separate. The conveniences for each sex shall be indicated by a suitable notice.
- 9—These Regulations may be cited as the Sanitary Accommodation Regulations, 1938, and shall come into force on the 1st July, 1938, and shall be without prejudice to the requirements in sub-section (1) of section 7 of the Act that the conveniences shall be maintained and kept clean and that effective provision shall be made for lighting the conveniences.

The Sanitary Accommodation Regulations prescribe the standard for factories subject to the provisions of section 7, *supra*, and in those cases the standard is legally binding.

It should be noted that the Sanitary Accommodation Regulations, in addition to prescribing the number of sanitary conveniences required, also lay down rules regarding the arrangement of the conveniences. In the first place, they must be disconnected from the workroom by means of a properly constructed intervening ventilated space. This may take the form of a ventilated passage-way, ante-room, or washing-room, but it is not of course required where the conveniences are situated outside the factory or workshop. Where persons of both sexes are employed, the conveniences must be so arranged that the approaches are separate and the actual compartments screened so that the interior is invisible to persons of the opposite sex who may have to pass them. The conveniences for females must be provided with proper doors and fastenings.

(iii) **Existing workplaces.**—Local authorities are empowered to secure the provision of adequate sanitary conveniences in workplaces, in accordance with the provisions of section 46 of the Public Health Act, 1936, *infra*.

Section 46, Public Health Act, 1936.—Sanitary conveniences in workplaces.

- (1) In a borough or urban district, and in a rural district or contributory place in which section twenty-two of the Public Health Acts Amendment Act, 1890, was in force immediately before the commencement of this Act, every building which is used as a workplace shall be provided with sufficient and satisfactory accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in, or in attendance at, the building and also, where persons of both sexes are employed or in attendance, with sufficient and satisfactory separate accommodation for persons of each sex, unless the local authority are satisfied that in the circumstances of the particular case the provision of such separate accommodation is unnecessary.
- (2) If it appears to the local authority that the provisions of the preceding subsection are not complied with in the case of any building, they shall by notice require the owner or the occupier of the building to make such alterations in the existing conveniences, and to provide such additional conveniences, as may be necessary.
- (3) The provisions of Part XII of this Act, with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given under this section.
- (4) This section shall not apply to a shop to which the Shops Act, 1934, applies.

The district council must serve a notice in every case where they are satisfied (as, for example, as a result of a report by their sanitary inspector) that the existing conveniences are

inadequate or unsatisfactory, requiring the owner or occupier to carry out the necessary alterations or the provision of additional conveniences. It should be noted that section 90(1) of the Act of 1936 defines "sanitary conveniences" as meaning closets and urinals, and the term "closet" includes a privy.

Where it appears to a local authority (as defined in the Act of 1936 (see *ante* p. 15)), that any building is without sufficient closet accommodation or that any closets are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition, the authority may serve notice upon the owner of the building, in accordance with section 44 of the Act of 1936 (see *ante*, p. 141) requiring the provision or reconstruction of such closets as may be necessary. Similarly, under section 45 of the Act of 1936 (see *ante*, p. 143), a local authority may by notice require the owner or the occupier of a building to take the necessary steps to repair or cleanse defective closets which are capable of repair or cleansing without reconstruction. Sections 44 and 45, *supra*, do not apply to a shop to which the Shops Act, 1934, applies, or to a factory, or to a building to which section 46 of the Act of 1936 applies.

BAKEHOUSES.

A "bakehouse" is defined as—

"any place in which bread, biscuits, or confectionery is or are baked by way of trade or for purposes of gain" (*u*)

Enforcement of provisions relating to bakehouses.—

Section 157 of the Factories Act, 1937(*x*), provided that sections 97 to 100 of the Act of 1901, which were repealed by the Act of 1937, should have effect, with the necessary modifications, as set out in Part I of the Third Schedule to the Act of 1937, and be enforced by district councils. By the Ministry of Health (Factories and Workshops Transfer of Powers) Order, 1921(*y*), the powers and duties of the Secretary of State so far as they related to the supervision and enforcement of the provisions of sections 97, 98, 99, and 100 of the Factory and Workshop Act, 1901, were transferred to the Minister of Health, and dealt with by local sanitary authorities. The Act of 1937 maintained this position, but the Food and Drugs Act, 1938, repealed the provisions of the Act of 1937, so that there are now no special provisions relative to bakehouses

(*u*) Sect. 152, Factories Act, 1937; 30 Halsbury's Statutes 298.

(*x*) 30 Halsbury's Statutes 301.

(*y*) S.R. and O., 1921, No. 958.

(except basement bakehouses ; see *post*, p. 335). The general provisions of the Food and Drugs Act, 1938, apply, especially section 13, *infra*, relative to rooms where food is prepared.

Section 13, Food and Drugs Act, 1938.—Provisions as to rooms where food intended for sale is prepared or stored, etc.

- (1) Subject to the provisions of this section, the following provisions shall have effect in relation to every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, that is to say—
- (a) no sanitary convenience, dustbin or ashpit shall be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room ;
 - (b) no cistern for the supply of water to the room shall be in direct communication with, or discharge directly into, a sanitary convenience, and there shall not be within the room any outlet for the ventilation of a drain, or, except with the approval of the local authority, an inlet into any drain conveying sewage or foul water ;
 - (c) the walls, ceiling, floor, windows and doors of the room shall be kept in a proper state of repair ;
 - (d) the walls, ceiling and doors of the room shall be painted, whitewashed, cleansed, or purified as often as may be necessary to keep them clean and the windows of the room shall be kept clean ;
 - (e) the room shall not be used as a sleeping place, and, so far as may be necessary to prevent risk of infection or contamination of food in the room, no sleeping place adjoining the room shall communicate therewith except through the open air, or through an intervening ventilated space ;
 - (f) except in the case of an artificially refrigerated room, suitable and sufficient means of ventilation shall be provided and suitable and sufficient ventilation shall be maintained ;
 - (g) no refuse or filth, whether solid or liquid, shall be deposited or allowed to accumulate in the room, except so far as may be necessary for the proper carrying on of the trade or business for which the room is used, and the floor of the room shall be cleansed as often as may be necessary to keep it clean ;
 - (h) cleanliness shall be observed by persons employed in the room, both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing ; and
 - (i) there shall be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels, and clean water, both hot and cold, for the use of persons employed in the room :

Provided that paragraph (i) of this subsection shall not apply in relation to a room which is used for the sale or storage, or for the sale and storage, of food contained in containers

of such materials, and so closed as to exclude all risk of contamination, but is not otherwise used for any purpose in connection with the preparation, storage or sale of food.

- (2) If, in the case of a room to which the preceding subsection applies—

- (a) any of the requirements of that subsection are not complied with ; or
- (b) any person does or permits any act or thing in contravention of that subsection, or fails to take all such steps as may be reasonably necessary to prevent risk of contamination of food in the room ; or
- (c) any person prevents the owner of the room from executing any work necessary to make the room comply with the said requirements,

then, in the first-mentioned case, the occupier of the room and, in the other cases mentioned, the person in question, whether he be the occupier or not, shall be liable to a fine not exceeding twenty pounds and to a further fine not exceeding five pounds for each day during which the offence continues after conviction therefor.

- (3) If, in the case of a room to which subsection (1) of this section applies any of the requirements specified in paragraphs (a), (b), (c) or (f) of that subsection is not complied with, then, in so far as that requirement is of a structural character, the owner of the room shall, if he let it for the purpose of being used for the preparation, sale or storage of food, or, if not having so let it, he permits it to be so used after receiving notice from the local authority, be liable to the penalty mentioned in the last preceding subsection, but without prejudice to the liability of the occupier under that subsection.
- (4) Where the owner of a room who did not let it for the purpose of being used for the preparation, sale or storage of food executes any work necessary to make the room comply with the requirements of subsection (1) of this section, he may recover the expenses incurred by him in so doing from the occupier of the room summarily as a civil debt.
- (5) In this section, the expression " room " includes a shop or cellar or any other part of a building, and a shed, store or out-building or any part thereof, and the provisions of this section, except paragraphs (e) and (f) of subsection (1) thereof, shall, so far as applicable, apply in relation to a yard, forecourt, or area as they apply in relation to a room.
- (6) Save in so far as may be expressly provided by Food Regulations, neither this nor the next succeeding section shall apply in relation to premises which are used for the preparation, sale or storage of articles prepared from, or consisting of, materials other than those of animal or vegetable origin, but are not otherwise used for any purpose in connection with the preparation, storage or sale of food.

(b) **Overcrowding in bakehouses.**—The provisions relating to overcrowding in bakehouses are given in detail on pages 322, *et seq.*

(c) **Basement bakehouses.**—A “basement bakehouse” is defined by subsection (4) of section 54 of the Factories Act, 1937, as follows—

“For the purpose of this section “basement bakehouse” means a bakehouse any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room; and “baking room” means any room used for baking, or for any process incidental thereto.”

There is no indication as to what is meant by the term “adjoining” in the above definition. In regard to underground rooms in dwelling-houses, the depth is to be measured in relation to ground within nine feet of the room, but so far as bakehouses are concerned, no distance is specified. There seems to be no reason, however, why a similar distance should not be used.

Section 54 of the Act of 1937 (see *post*, p. 336) prohibits the use of basement bakehouses unless they were so used on the 30th July, 1937, and a certificate of suitability had been issued by the district council in accordance with the provisions of subsection (2) of section 101 of the Factory and Workshop Act, 1901(a). From the 1st January, 1904—the date when the provisions of section 101, *supra*, came into operation—it was illegal to use any premises as a basement bakehouse unless—

- (1) the premises were so used prior to the passage of the Act of 1901; and
- (2) the premises had been certified by the district council to be suitable for the purpose(b).

The Act of 1937 maintains this position, so that it is illegal to use as a bakehouse, a basement bakehouse which was not in use on the 30th July, 1937, and certified as suitable by the district council before that date, but it strengthens the law as follows :—

- (1) If a basement bakehouse is not used as a bakehouse for a period exceeding 12 months it must not be so used again; and
- (2) It is the duty of the district council, in the year commencing the 1st July, 1938, and thereafter in every fifth succeeding year, to re-examine every basement bakehouse in respect of which a certificate of suitability has been issued. If the council is not satisfied that the bakehouse is suitable for use as such as regards construction, height, light, ventilation, and any hygienic respect, they *must* notify the occupier in writing that the certificate will cease to have effect after a period, not being less than one month, specified in the notice. Alternatively, they must give notice of continuance of the certificate. The occupier has a right of appeal to a court of summary jurisdiction, and a further appeal may be made to quarter sessions.

(a) 8 Halsbury's Statutes 568.

(b) *Evans v. Gallon & Son* (1904), 68 J.P. 537; 24 Digest 906, 58.

A case(c) was heard under the corresponding provisions of the Act of 1901 relative to the meaning of the expression "used at the passing of the Act," where an underground bakehouse, which had been let as such for a long period, was temporarily unoccupied. It was held to be used as a bakehouse within the meaning of subsection (1) of section 101, *supra*. It should be noted, however, that under the Act of 1937, the period the bakehouse may remain unoccupied must not exceed 12 months, otherwise the premises may no longer be used as a bakehouse. The judgement in *Schwerzerhof v. Wilkins* is subject, therefore, to this qualification.

Finally, it will be observed that the district council is responsible for the enforcement of section 54, *infra*, in respect of all basement bakehouses. Under the Act of 1901, district councils were only responsible in the case of retail bakehouses.

In the case of any default by a local authority, an inspector of factories has power to act in accordance with the provisions of section 10 of the Act of 1937(d).

It has been held(e) that the suitability of a basement bakehouse is to be decided with reference to conditions existing at the time of hearing an appeal against revocation of a certificate, and not at the time notice of revocation was issued by the district council.

Section 54, Factories Act, 1937.—Basement bakehouses.

- (1) Without prejudice to the provisions of the last foregoing section, a basement bakehouse shall not be used as a bakehouse unless it was so used at the date of the passing of this Act and a certificate of suitability had been issued by the district council under an enactment repealed by this Act in respect thereof, and any basement bakehouse which, for a period exceeding twelve months, is not used as a bakehouse shall not be so used again.
- (2) It shall be the duty of every district council to carry out, in the year beginning at the date of the commencement of this Act and in every fifth succeeding year after that year, an examination of every basement bakehouse in respect of which a certificate of suitability has been issued and—
 - (a) if as the result of the examination the council are not satisfied that the bakehouse is suitable for use as such as regards construction, height, light, ventilation, and any hygienic respect, they shall give notice in writing that the certificate shall cease to have effect after the expiration of such period, being not less than one month, as may be specified in the notice, and the basement bakehouse shall not be used as a bakehouse after the expiration of that period; or

(c) *Schwerzerhof v. Wilkins*, [1898] 1 Q.B. 641; 24 Digest 906, 57.

(d) 30 Halsbury's Statutes 212; and see *post*, p. 350.

(e) *Fulham Borough Council v. A. B. Hemmings, Ltd.*, [1940] 2 K.B. 669; [1940] 3 All E.R. 625, D.C.

- (b) if the council are satisfied that the bakehouse is suitable as regards the matters aforesaid, they shall give notice in writing that the certificate shall continue to operate so long as the bakehouse may otherwise lawfully be used, but without prejudice to the power of the council to revoke the certificate as the result of a subsequent examination under this subsection.
- (3) Where the district council give notice that a certificate of a basement bakehouse is to cease to have effect, the occupier may, within twenty-one days of the notice, appeal by way of complaint to a court of summary jurisdiction, and the court may, if it is satisfied that the bakehouse is suitable as regards the matters aforesaid, by order direct that the certificate shall continue to operate as if a notice had been given under paragraph (b) of the last foregoing subsection or may by order extend the period at the expiration of which the certificate is to cease to have effect, and pending the final determination of the appeal the certificate shall continue to operate.
- (4) For the purpose of this section "basement bakehouse" means a bakehouse any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room; and "baking room" means any room used for baking, or for any process incidental thereto.
- (5) The prohibition of the use of basement bakehouses under this section shall be enforced by the district council, and the provisions of Part I of this Act as to the power to act in default of a district council shall apply in the case of any default of the district council under this section.

(d) **Bakehouses Welfare Order.**—The Minister of Labour and National Service is empowered by section 46 of the Act of 1937(*f*) to make Orders dealing with various matters affecting factories and workshops, and in conformity with that Act, the Bakehouses Welfare Order(*g*) was made on the 26th February, 1927, which is administered by the factory inspectors.

A somewhat similar Order(*h*) was made on the 21st of September, 1927, respecting biscuit factories.

The Bakehouse Order applies to all factories and workshops in which the baking of bread or flour confectionery is carried on, and if the occupier fails to comply with the requirements of the Order, an offence against the Act is committed(*i*).

HOMework.

Part VIII of the Factories Act, 1937(*a*), contains provisions relating to certain work carried out at home by outworkers. Section 110, *infra*, requires the occupier of every factory, and

(*f*) 30 Halsbury's Statutes 237.

(*g*) S.R. and O., 1927, No. 191.

(*h*) Biscuit Factories Welfare Order, 1927; S.R. and O., 1927, No. 872.

(*i*) Sect. 130, Factories Act, 1937; 30 Halsbury's Statutes 288.

(*a*) 30 Halsbury's Statutes 277.

every contractor employed by such occupier, to supply to the district council every six months, lists containing the names and addresses of the persons carrying on homework.

Section 110, Factories Act, 1937.—Lists of outworkers to be kept in certain trades.

- (1) In the case of persons employed in such classes of work as may from time to time be specified by Regulations of the Secretary of State, the occupier of every factory and every contractor employed by any such occupier in the business of the factory shall—
 - (a) keep in the prescribed form and manner, and with the prescribed particulars, lists showing the names and addresses of all persons (hereinafter referred to as outworkers) directly employed by him, either as workmen or as contractors, in the business of the factory, outside the factory, and of the places where they are employed; and
 - (b) send to an inspector such copies of or extracts from those lists as the inspector may from time to time require; and
 - (c) send to the district council during the month of February and the month of August in each year copies of those lists, showing all outworkers so employed by him during the preceding six months.
- (2) Every district council shall cause the lists received by the council in pursuance of this section to be examined, and shall furnish the name and place of employment of every outworker included in any such list whose place of employment is outside the district of the council to the council in whose district his place of employment is.
- (3) The lists kept by the occupier or contractor shall be open to inspection by any inspector, and by any officer duly authorised by the district council, and the copies sent to the council and the particulars furnished by one council to another shall be open to inspection by any inspector or officer of any government department.
- (4) This section shall apply to any place from which any work is given out in connection with the business of a factory (whether the materials for the work are supplied by the occupier or not) and to the occupier of that place, and to every contractor employed by the occupier in connection with the said work, as if that place were a factory.
- (5) In the event of a contravention of this section by the occupier of a factory or place, or by a contractor, the occupier or contractor shall be guilty of an offence and liable to a fine not exceeding ten pounds.

Outworkers lists are only required in respect of persons employed in such classes of work as have been specified by Order of the Secretary of State. The provisions of section 110, *supra*, have been applied to the following classes of work:—

Classes of work in respect of which outworkers' lists must be kept.

The making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel.

- The making up, ornamenting, finishing and repairing of table linen, bed linen or other household linen (including in the term linen, articles of cotton or cotton and linen mixtures) and any processes incidental thereto ;
- The making, ornamenting, mending, and finishing of lace and of lace curtains and nets ;
- The making of curtains and furniture hangings and any processes incidental thereto ;
- Cabinet and furniture making and upholstery work ;
- The making of electro-plate ;
- The making of files ;
- The manufacture of brass and of articles or parts of articles of brass (including in the term brass any alloy or compound of copper with zinc or tin) ;
- Fur-pulling ;
- The making of iron and steel cables and chains ;
- The making of iron and steel anchors and grapnels ;
- The making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds ;
- The making of locks, latches, and keys ;
- The making or repairing of umbrellas, sunshades, parasols, or parts thereof ;
- The making of artificial flowers ;
- The making of nets other than wire nets ;
- The making of tents ;
- The making or repairing of sacks ;
- The covering of racquet or tennis balls ;
- The making of paper bags ;
- The making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, clip, or similar material ;
- The making of brushes ;
- Pea picking ;
- Feather sorting ;
- The carding, boxing, or packeting of buttons, hooks and eyes, pins, and hair pins ;
- The making of stuffed toys ;
- The making of baskets ;
- Any processes incidental to the above(b) ;
- The manufacture of chocolates or sweetmeats, and any work incidental thereto(c) ;
- The making or filling of cosaques, Christmas crackers, Christmas stockings or similar articles or parts thereof, and any work incidental thereto ;
- The weaving of any textile fabric, and any process incidental thereto(d) ;
- The manufacture of lampshades other than lampshades made wholly of metal or glass or stone(e).

Where outworkers are employed in any of the above trades or processes, lists must be sent to the district council during February and August in each year.

It will be observed that where the lists sent to the district council contain the names of persons resident in the area of another district council, the former council must send the particulars to the council in whose area the outworker carries on work. The effect of this is that in addition to receiving each half-year lists from occupiers of factories and workshops

(b) Home Work Order, 1911 ; S.R. and O., 1911, No. 394.

(c) Home Work Order, 1912 ; S.R. and O., 1912, No. 158.

(d) Home Work Order, 1913 ; S.R. and O., 1913, No. 91.

(e) Home Work (Lampshades) Order, 1929 ; S.R. and O., 1929, No. 1118.

in their own district, inward and outward transfers have to be made, so that each district council may become aware of the number of outworkers carrying on work in their area. Outworkers should be visited regularly, in order to see that the working conditions are satisfactory, and that there is no risk of infection being conveyed by the articles made by the outworkers.

Section 111 of the Factories Act, 1937, *infra*, empowers a district council to serve notice upon the occupier of a factory or workshop, or upon a contractor employed by such person, that the premises where homework is carried on are unsatisfactory, and the occupier or contractor is liable to a penalty if further work is issued to the outworker concerned. Section 111 does not enable the district council to deal with the owner or occupier of the unsatisfactory premises, but of course action would probably be possible under the Public Health Act or other powers possessed by the district council.

Section 111, Factories Act, 1937.—Employment of person in unwholesome premises.

- (1) Where work in respect of which this section applies is carried on for the purpose of or in connection with the business of a factory in any place which is in the opinion of the district council injurious or dangerous to the health of the persons employed therein, the district council may give notice in writing to the occupier of the factory or to any contractor employed by him setting forth particulars of the respects in which the place is, in their opinion, so injurious or dangerous, and the reasons for that opinion and, if the occupier or contractor after the expiration of ten days from the receipt of such notice gives out work to be done in that place, he shall, unless it is proved to the satisfaction of the court dealing with the case that the place is not injurious or dangerous in the respects set forth in the notice, be guilty of an offence.
- (2) For the purpose of this section, any place from which work is given out shall be deemed to be a factory.
- (3) This section shall apply in respect of such classes of work as may be specified in regulations made by the Secretary of State.

The classes of work to which this section applies, are those detailed in respect of which outworkers' lists must be kept as required by section 110 of the Factories Act, 1937 (see *ante*, p. 338).

Section 153 of the Act of 1936, *infra*, empowers a local authority to prohibit premises being used for home work, if a case of notifiable disease (see *post*, p. 418) occurs. This section only applies to those trades specified in subsection (4) and the Minister of Health has not yet made any order adding to the list prescribed in that subsection.

Section 153, Public Health Act, 1936.—Power to prohibit home work on premises where notifiable disease exists.

- (1) If a case of a notifiable disease occurs on any premises, then, whether the person suffering from the disease has been removed from the premises or not, the local authority may make an order forbidding any work to which this section applies to be given out to any person living or working on those premises, or on such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or other place from which work is given out, or on any contractor employed by any such occupier.
- (2) An order under this section may be expressed to operate for a specified time or until the premises or any part thereof specified in the order have been disinfected to the satisfaction of the medical officer of health, or may be expressed to be inoperative so long as any other reasonable precautions specified in the order are taken.
- (3) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.
- (4) This section applies to the making, cleaning, washing, altering, ornamenting, finishing, or repairing of wearing apparel and any work incidental thereto, and to such other classes of work as may from time to time be specified by order of the Minister.

MEANS OF ESCAPE IN CASE OF FIRE.

It is the duty of the district council to enforce the provisions of the Act of 1937 relating to means of escape in case of fire. These provisions are contained in sections 34 and 35, *infra*, and it will be observed that they apply in the case of existing factories employing more than twenty persons, and to newly constructed or converted buildings if ten persons are employed.

Section 34, Factories Act, 1937.—Means of escape in case of fire.

- (1) Every factory to which this section applies shall be certified by the district council as being provided with such means of escape in case of fire for the persons employed therein as may reasonably be required in the circumstances of each case, and, if any premises with respect to which no such certificate is in force are used as a factory, the occupier shall be guilty of an offence and liable on conviction thereof to a fine not exceeding fifty pounds, and if the contravention in respect of which he was so convicted is continued after the conviction, he shall (subject to the provisions of section one hundred and thirty-two of this Act) be guilty of a further offence and liable in respect thereof to a fine not exceeding five pounds for each day on which the offence was so continued.

It shall be the duty of the council to examine every such factory and, on being satisfied that the factory is so provided as aforesaid, to give such a certificate accordingly. The certificate shall specify precisely and in detail the means of escape pro-

vided and shall contain particulars as to the maximum number of persons employed or proposed to be employed in the factory as a whole and, if the council think fit, in any specified part thereof, and as to any explosive or highly inflammable material stored or used and as to other matters taken into account in granting the certificate. The certificate shall be attached by the occupier to the general register and a copy of it shall be sent by the council to the inspector for the district.

- (2) All means of escape specified in the certificate as aforesaid shall be properly maintained and kept free from obstruction.
- (3) A factory which has been furnished with a certificate in pursuance of subsection (1) of section fourteen of the Factory and Workshop Act, 1901, and a factory in respect of which a notice issued in pursuance of subsection (2) of that section has been complied with, or in respect of which an award has been made under subsection (3) of that section and has been complied with, shall be entitled to receive a certificate from the district council and, pending the receipt of the certificate, no offence shall be deemed to be committed by reason of the use of the factory while no certificate under this section is in force in respect thereto :

Provided that this subsection shall only apply to any such factory if and so long as the means of escape provided therein are properly maintained and shall not apply to any such factory if, since the certificate was furnished or the notice or award was complied with in pursuance of the said section fourteen, any action has been taken of which notice would, if this section had been in force and a certificate had been granted thereunder, have been required to be given to the council.

- (4) In the case of any factory constructed or converted for use as a factory before the coming into operation of this section (not being a factory to which the last foregoing subsection applies), no offence shall be deemed to be committed under this section by reason of the use of the factory during any period that may elapse between the coming into operation of this section and the grant or refusal of a certificate by the district council after examining the factory under this section, and if the council refuse to grant a certificate in respect of the factory unless alterations are made, no such offence shall be deemed to be committed while the alterations are being carried out in accordance with the requirements of the council.
- (5) If, after the grant of a certificate, it is proposed to make any material extension or material structural alteration of the factory premises or to increase materially the number of persons employed in the factory or in any part specified in the certificate, or to begin to store or use explosive or highly inflammable material in the factory or materially to increase the extent of such storage or use the occupier shall give notice in writing to the council of the proposal.
- (6) If the council on receipt of the notice mentioned in the last foregoing subsection are of opinion that the conditions in regard to escape in case of fire will be affected, or if at any time they are satisfied that by reason of changed conditions the existing means of escape have become insufficient, they may by notice in writing require the occupier to make such alterations, within such period, as may be specified in the notice.

- (7) If it appears to an inspector that dangerous conditions in regard to escape in case of fire exist in any factory to which this section applies he may give notice thereof in writing to the district council, and it shall be the duty of the council forthwith to examine the factory, and they may by notice in writing require the occupier to make such alterations, within such period, as may be specified in the notice.
- (8) The occupier shall, within the period specified in any notice of the district council under this section, carry out any alterations required by the notice, and upon their being carried out the council shall amend the certificate or issue a new certificate, and shall send a copy of the amended or new certificate to the inspector for the district ; and if the alterations are not so carried out, the council shall, without prejudice to the taking of other proceedings, cancel the certificate.
- (9) When notice is given by an inspector to a district council under this section, the council shall inform the inspector of any action taken for remedying the dangerous conditions, and, if no such action is taken by the council within one month of the receipt of the notice, the inspector may take the like action as the council might have taken and shall be entitled to recover from the district council summarily as a civil debt all such expenses as the inspector may incur in so doing, and as are not recovered from any other person, and are not expenses incurred in or about any unsuccessful legal proceedings.
- (10) If the occupier of any factory is aggrieved by the refusal of a district council to grant a certificate under this section or by being required by a district council or by an inspector under this section to carry out any alterations at the factory or by the cancellation of a certificate, he may appeal by way of complaint, within twenty-one days of the refusal, notice of requirement, or cancellation, to a court of summary jurisdiction, and, pending the final determination of the appeal, no offence shall be deemed to be committed under this section by reason that the premises to which the appeal relates are used as a factory without a certificate being in force with respect thereto ; and the decision of the court shall be binding on the occupier and the council or inspector.
- (11) If it appears to an inspector that the conditions in regard to escape in case of fire in any factory to which this section applies are so dangerous that the factory or any part thereof ought not to be used, or ought not to be used for a particular process or work, until steps have been taken to remedy the danger, he may, in lieu of serving a notice on the district council under the foregoing provisions of this section, make a complaint to a court of summary jurisdiction, and the court may, on being satisfied of the matters aforesaid, by order prohibit the use of the factory or part thereof, or its use for the particular process or work, until such works have been executed as are in the opinion of the court necessary to remedy the danger.

When any works have been executed in pursuance of such an order as aforesaid, the inspector shall give notice thereof to the district council, who shall amend any certificate in force under this section in respect of the factory, or issue a new certificate, as the case may require.

- (12) An examination by a district council under this section shall only be carried out by officers of the council authorised in writing either to carry out that examination or generally to carry out examinations under this section.
- (13) This section applies to every factory—
- (a) in which more than twenty persons are employed ; or
 - (b) which is being constructed or converted for use as a factory at the date of the passing of this Act, or is constructed or so converted after that date, and in which more than ten persons are employed in the same building on any floor above the ground floor of the building ; or
 - (c) of which the construction has been completed before the passing of this Act and in which more than ten persons are employed in the same building above the first floor of the building or more than twenty feet above the ground level ; or
 - (d) in or under which explosive or highly inflammable materials are stored or used.
- (14) In the application of this section to the administrative county of London—
- (a) the section shall have effect as if reference to the London County Council were therein substituted for references to the district council ; and
 - (b) any factory or part thereof forming part of a building from all parts of which means of escape in case of fire have been provided in accordance with the requirements of Part VIII of the London Building Act, 1930, and are maintained, shall be entitled to receive from the London County Council a certificate for the purposes of this section, and pending the receipt of the certificate, no offence shall be deemed to be committed by reason of the use of the factory while no certificate under this section is in force with respect thereto :

Provided that this paragraph shall not apply to any such factory or part thereof if, since the means of escape were provided, any action has been taken of which notice would, if this section had been in force and a certificate had been granted thereunder, have been required to be given to the council.

Section 35, Factories Act, 1937.—Regulations and byelaws as to means of escape in case of fire.

- (1) The Secretary of State may make regulations as to the means of escape in case of fire to be provided in factories or any class or description of factory.

It shall be the duty of the district council to see that the regulations are complied with, and the provisions of Part I of this Act as to the power to act in default of a district council shall apply in the case of any default of the district council under this subsection.

- (2) If a certificate has been issued under the last foregoing section in respect of a factory which is not in conformity with the regulations under this section, the district council shall serve a notice on the occupier of the factory requiring him to make, within a specified period, such alterations as they consider necessary to

bring the factory into conformity with the regulations, and the provisions of the last foregoing section shall apply in relation to any such notice as they apply to a notice of the district council under that section.

- (3) Every district council shall, in addition to any powers which they possess with reference to the prevention of fire, have power to make byelaws as to the means of escape in case of fire to be provided in factories or any class or description of factory, but such byelaws shall be void in so far as they contain any provisions inconsistent with any regulations made by the Secretary of State under this section.
- (4) The Minister of Health shall be the confirming authority for any byelaws made by a district council under this section.
- (5) This section shall in its application to the administrative county of London have effect as if references to the London County Council were therein substituted for references to the district council, except in the last foregoing subsection which shall not apply to London, and as if the matters with respect to which byelaws may be made under this section were included in the matters with respect to which the London County Council may make byelaws under section four of the London Building Act (Amendment) Act, 1935, and as if any byelaws made under this section were made under the said section four.

In accordance with section 36 of the Factories Act, 1937(*f*), the doors of every factory must not be locked or bolted or fastened while any person is working therein or having meals, in such a manner that they cannot be easily and immediately opened from the inside. In every factory, the doors of every room where more than ten persons are employed, must be constructed so as to open outwards, except in the case of sliding doors.

The Ministry of Health have issued a series of Model Byelaws(*g*) for the guidance of local authorities. The procedure with respect to the making of byelaws is contained in sections 250 to 252 of the Local Government Act 1933(*h*).

COTTON CLOTH FACTORIES.

Before a local authority pass plans for the erection or conversion of a building proposed to be used as a cotton cloth factory, the plans must be certified by the superintending inspector of factories, in accordance with section 63, Factories Act, 1937, *infra*.

Section 63, Factories Act, 1937.—Certificates required before approval of building plans relating to cotton cloth factories.

No plans or sections relating to the erection or conversion of a building proposed to be used as a cotton cloth factory shall be

(*f*) 30 Halsbury's Statutes 233.

(*g*) Model Series No. XVIII, Dec., 1934, H.M.S.O.

(*h*) 26 Halsbury's Statutes 440.

approved by any local authority to whom they have been submitted in pursuance of any Act or of any byelaw made under any Act unless they are accompanied by a certificate in writing, issued by the superintending inspector of factories for the division in which the building is proposed to be erected or converted, certifying that the building to which the plans and sections relate would not, if erected or converted in accordance therewith, contravene or fail to comply with the regulations made under the Factory and Workshop (Cotton Cloth Factories) Act, 1929.

A cotton cloth factory means any room, shed or workshop, or part thereof, in which the weaving of cotton cloth is carried on⁽ⁱ⁾. Section 52 of the Act of 1937^(k) enables the Secretary of State to make regulations as to cotton cloth factories, and those in force at present were made in 1929^(l).

ANTHRAX IN FACTORIES.

Where a case of anthrax occurs in a factory, the employer and the medical practitioner must notify the factory inspector^(m).

STEAM WHISTLES.

As to the blowing of steam whistles at factories, see chapter 9, *ante*, p. 245.

ADMINISTRATION.

(a) **Notice of occupation of factory.**—Every person who occupies premises as a factory must, within one month, serve on the factory inspector for the district a written notice containing—

- i—Name of the occupier or the title of the firm ;
- ii—Postal address of the factory ;
- iii—Nature of the work ;
- iv—Whether mechanical power is used and, if so, its nature ;
- v—The name of the district council within whose district the factory is situated ; and
- vi—Such other particulars as may be prescribed.

Within one month of the date upon which mechanical power is, after the commencement of the Act, first used in any factory, the occupier must serve on the factory inspector a written notice stating the nature of such mechanical power⁽ⁿ⁾.

The form of notice of occupation has been prescribed by the Secretary of State^(o).

(i) Sect. 152, Factories Act, 1937 ; 30 Halsbury's Statutes 298.

(k) 30 Halsbury's Statutes 239.

(l) S.R. and O., 1929, No. 300.

(m) Sect. 66, Factories Act, 1937 ; 30 Halsbury's Statutes 247.

(n) Sect. 113, Factories Act, 1937 ; 30 Halsbury's Statutes 280.

(o) Form No. 9.

(b) **Register of Factories.**—Section 8(3) of the Factories Act, 1937(*p*), requires every district council to keep a register of all factories situate within their district with respect to which they are required to enforce any of the provisions of the Act of 1937. In effect this means a register of *all* factories, as the district council is responsible for enforcing the provision of section 7 (*ante*, p. 329), relative to sanitary conveniences at all factories. In compiling their register, district councils will utilise the information forwarded from time to time by the factory inspectors, but frequent visits should be paid by the sanitary staff in order to ascertain if any changes occur. At the same time, new factories and workshops may be discovered, which have not been notified to the factory inspector.

(c) **Abstract of the Act of 1937.**—Section 114 of the Factories Act, 1937(*g*), requires an abstract of the Act, in the prescribed form, to be posted up at the principal entrances of every factory, and elsewhere in the premises as required by the factory inspector. The notice must contain, in addition to the prescribed abstract of the Act, the following information :—

- (1) Notice of the address of the inspector for the district and the superintending inspector for the division ;
- (2) Notice of the name and address of the examining surgeon for the factory ;
- (3) Notice of the clock, if any, by which the period of employment and times for meals in the factory or workshop, are regulated ; and
- (4) Every other notice and document required by the Act to be affixed in the factory or workshop.

In the case of tenement factories the owner and not the occupier is responsible for affixing the abstract and notices(*r*).

(d) **General registers.**—The occupier of every factory must keep a general register, in accordance with section 116 of the Act of 1937(*s*), in the prescribed form, containing the requisite information, including the dates when limewashing was carried out (see *ante*, p. 319). The occupier of the factory must send to the factory inspector such extracts from the register as he may require. District councils and their officers have all the powers of a factory inspector in relation to factories in respect of which they have duties to perform (see *post*, p. 349), and accordingly a sanitary inspector is entitled to inspect the general register in accordance with section 123(1)(*c*) of the Act of 1937(*t*).

(*p*) 30 Halsbury's Statutes 211.

(*g*) 30 Halsbury's Statutes 281.

(*r*) Sect. 101, Factories Act, 1937 ; 30 Halsbury's Statutes 268.

(*s*) 30 Halsbury's Statutes 281.

(*t*) 30 Halsbury's Statutes 284.

(e) **Power of district councils and their officers.**—Section 128 of the Factories Act, 1937, *infra*, gives district councils and their officers, all the powers of a factory inspector, in respect to factories.

Section 128, Factories Act, 1937.—Provisions as to county and district councils.

- (1) The expenses of the London County Council under this Act shall be defrayed as expenses for general county purposes.
- (2) The expenses under this Act of the common council of the City of London and of the council of a metropolitan borough shall be defrayed as part of their general expenses.
- (3) The medical officer of health of every district council shall—
 - (a) in his annual report to the council report specifically on the administration of, and furnish the prescribed particulars with respect to, the matters under Part I and Part VIII of this Act which are administered by the district council, and shall send a copy of his annual report or so much of it as deals with those matters to the Secretary of State ; and
 - (b) give written notice to the inspector for the district of any factory coming to his knowledge in which no abstract of this Act is affixed in accordance with this Act.
- (4) An officer of any district council appointed for the purpose of inspection of factories shall give a written notice to the inspector for the district of any factory coming to his knowledge in which no abstract of this Act is affixed in accordance with this Act.
- (5) For the purpose of their duties under this Act, a county council and a district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings, or otherwise, as an inspector has, and accordingly in relation to their said duties the provisions of this Act as to furnishing means required by an inspector, and delaying or obstructing an inspector, shall be construed as including references to such officers ; but no such powers of entry or inspection shall be exercised except by officers of the council authorised by them in writing in that behalf, either generally or specially, and any such officer shall if so required produce his authority to the occupier or other person holding a responsible position of management at the factory.
- (6) If any person who, in pursuance of powers conferred by the last foregoing subsection, is admitted into any factory or place discloses to any person any information obtained by him in the factory or place with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence and liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months.

The powers of a factory inspector are detailed at length in section 123, *infra*.

Section 123, Factories Act, 1937.—Powers of inspectors.

- (1) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things, that is to say :—
 - (a) To enter, inspect and examine at all reasonable times, by day and night, a factory and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory and any part of any building of which a factory forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used ;
 - (b) To take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty ;
 - (c) To require the production of the registers, certificates, notices and documents kept in pursuance of this Act and to inspect, examine and copy any of them ;
 - (d) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act and the enactments for the time being in force relating to public health are complied with, so far as respects a factory and any persons employed in a factory and any young persons to whom section ninety-eight of this Act applies ;
 - (e) To require any person whom he finds in a factory to give such information as it is in his power to give as to who is the occupier of the factory ;
 - (f) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or whom he has reasonable cause to believe to be or to have been within the preceding two months, employed in a factory or in any employment mentioned in subsection (1) of the said section ninety-eight and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined ; so, however, that no one shall be required under this provision to answer any question or to give any evidence tending to criminate himself ;
 - (g) In the case of an inspector who is a duly qualified medical practitioner, to carry out such medical examinations as may be necessary for the purposes of his duties under this Act ;
 - (h) To exercise such other powers as may be necessary for carrying this Act into effect.
- (2) The occupier of every factory, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, the taking of samples, or otherwise for the exercise of his powers under this Act in relation to that factory.

of an inspector in pursuance of this section, or to produce any register, certificate, notice or document which he is required by or in pursuance of this Act to produce, or wilfully withholds any information as to who is the occupier of any factory, or conceals or prevents or attempts to conceal or prevent a person from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act ;

- (4) Where an inspector is obstructed in the execution of his powers or duties under this Act, the person obstructing him shall be guilty of an offence, and liable to a fine not exceeding five pounds ; and where an inspector is so obstructed in a factory the occupier of that factory shall be guilty of an offence.
- (5) Any certificate issued by a chief inspector, superintending inspector for a division, or an inspector for a district may be issued for a limited period or without limit of period and may be varied or revoked by that inspector or his successor in office.

It should be remembered that a sanitary inspector has power of entry to a factory or workplace at all reasonable hours, without the service of written notice, in accordance with section 287 of the Act of 1936 (see *ante*, p. 52). In respect to a factory, a sanitary inspector may enter by day or night if persons are employed, in accordance with sections 128 and 123 of the Act of 1937, *supra*.

A factory inspector is empowered by section 9(2) of the Factories Act, 1937 (see *post*, p. 351), to take with him into a factory or workshop, a medical officer of health, sanitary inspector or other officer of the district council.

(f) Powers and duties of medical officers of health.—The medical officer of health must include in his annual report, a special report dealing with the administration of the Act of 1937 so far as district councils are concerned, and a copy of such report must be forwarded to the Minister of Labour(*u*). The form of report is supplied by the Ministry of Labour.

(g) Default by district council and powers of Secretary of State.—The Secretary of State is authorised by section 10 of the Act of 1937(*w*), to empower the factory inspector to enforce the provisions of that Act enforceable by them, where the district council have failed to do so. In such circumstances, the factory inspector has the same powers with respect to the functions of district councils, as he has with respect to factories generally, and he can take the same proceedings for enforcing the provisions of the Act, as may be taken by the district council. Any expenses incurred by a factory inspector when acting in place of a defaulting council which are not recovered from any

(*u*) Sect. 128, Factories Act, 1937 ; 30 Halsbury's Statutes 287.

(*w*) 30 Halsbury's Statutes 212.

other person, may be recovered by him from the council concerned.

A factory inspector is empowered under section 9 of the Factories Act, 1937, *infra*, to serve notice upon a district council in respect of any matter requiring attention at a factory which is remediable under the public health law and not under the factory law. The district council must notify the factory inspector within one month of the receipt of the notice, as to the action taken by them to remedy the matter referred to therein.

Section 9, Factories Act, 1937.—Powers of inspector as to sanitary defects remediable by district council.

- (1) Where an inspector finds any act or default, in relation to any drain, sanitary convenience, water supply, nuisance, or other matter in a factory which is liable to be dealt with by the district council under this Part of this Act or under the law relating to public health, he shall give notice thereof in writing to the district council, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to the council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.
- (2) Where an inspector finds any such act or default as aforesaid, he may take with him into the factory a medical officer of health, sanitary inspector, or other officer of the district council.
- (3) If within one month after notice of an act or default is given by an inspector under this section to a district council proceedings are not taken for punishing or remedying the act or default, the inspector may take the like proceedings for the punishing or remedying thereof as the district council might have taken, and shall be entitled to recover from the district council summarily as a civil debt all such expenses incurred by him in and about the proceedings as are not recovered from any other person and have not been incurred in or about any unsuccessful legal proceedings.

(h) **Service of notices, etc.**—The service of notices and documents, etc., under the Factories Act, 1937, is governed by section 144, *infra*.

Section 144, Factories Act, 1937.—Service and sending of documents, etc.

- (1) Any document (including any summons or order) required or authorised to be served under this Act may be served—
 - (a) on any person by delivering it to him, or by leaving it at, or sending it by post to, his residence ;
 - (b) on any firm by delivering it to any partner of the firm, or by leaving it at, or sending it by post to, the office of the firm :

- (c) on the owner or occupier of a factory (including any such owner or occupier being a company to which the Companies Act, 1929, applies), in any such manner as aforesaid, or by delivering it, or a true copy thereof, to any person apparently not under the age of sixteen years at the factory.
- (2) Any such document may be addressed for the purpose of the service thereof on the occupier of the factory, to "the occupier" at the proper postal address of the factory, without further name or description.
- (3) The foregoing provisions of this section shall apply with the necessary modifications to documents required or authorised under this Act to be sent to any person, firm, owner or occupier, and to the sending, addressing, and delivery of such documents.

(i) **Légal Proceedings.**—All offences under the Factories Act, 1937, must be prosecuted before a court of summary jurisdiction(*x*), and if any person is aggrieved by the decision of such a court, he may appeal therefrom to quarter sessions(*y*).

Where an offence for which the occupier of a factory is liable to a fine has in fact been committed by some agent, servant, workman, or other person, such agent, etc., is liable to the same fine as if he were the occupier(*z*), but where the occupier is charged with the offence he must cause the actual offender to be brought before the court in accordance with section 137(1) of the Act of 1937(*a*). If the court is satisfied that the occupier has used due diligence to enforce the provisions of the Act, and that the actual offender has committed the offence without his knowledge, consent or connivance, that person, and not the occupier, must be convicted. If a factory inspector is satisfied that an offence has been committed under the above circumstances, he must take proceedings against the actual offender and not against the occupier of the factory.

RAG FLOCK.

The Rag Flock Act, 1911(*b*), prohibits the sale and use for the purpose of manufacture of certain articles, of unclean flock manufactured from rags. Subsection (1) of section 1, *infra*, prohibits the sale, etc., of rag flock which does not conform to a standard of cleanliness prescribed by the Minister of Health.

(*x*) Sect. 140, Factories Act, 1937; 30 Halsbury's Statutes 292.

(*y*) *Ibid*, sect. 141; 30 Halsbury's Statutes 293.

(*z*) Sect. 136, Factories Act, 1937; 30 Halsbury's Statutes 291.

(*a*) 30 Halsbury's Statutes 291.

(*b*) 13 Halsbury's Statutes 949.

Section 1(1), Rag Flock Act, 1911.—Prohibition of sale and use for the purpose of manufacture of certain articles of unclean flock manufactured from rags.

- (1) It shall not be lawful for any person to sell or have in his possession for sale flock manufactured from rags or to use for the purpose of making any article of upholstery, cushions, or bedding flock manufactured from rags or to have in his possession flock manufactured from rags intended to be used for any such purpose, unless the flock conforms to such standard of cleanliness as may be prescribed by regulations to be made by the Minister of Health, and, if any person sells or uses or has in his possession flock in contravention of this Act, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, ten pounds, or in the case of a second or subsequent offence fifty pounds.

.....
In accordance with subsection (1), *supra*, Regulations were made in 1912(c), which provide that—

“Flock shall be deemed to conform to the standard of cleanliness for the purposes of subsection (1) of section 1 of the Act when the amount of soluble chlorine, in the form of chlorides, removed by thorough washing with distilled water at a temperature not exceeding 25 degrees Centigrade from not less than 40 grammes of a well-mixed sample of flock, does not exceed 30 parts of chlorine in 100,000 parts of the flock.”

It is by no means easy to determine with certainty whether a particular flock comes within the provisions of the Act, because it must be manufactured from rags, flock which is not derived from rags does not come within the scope of the Act. Flock consisting of jute refuse, composed partly of waste fluff from the machines and partly of cuttings from woven jute fabric trimmed away during manufacture, was held to come within the provisions of the Act(d). In a further case(e), it was held that the section was not confined to rags which had been polluted by organic matter, but included flock made from new and uncontaminated material.

The term “flock manufactured from rags” having given rise to considerable doubts as to its exact meaning, the Rag Flock Act (1901) Amendment Act, 1928(f), was passed, section 1 being as follows:—

Section 1, Rag Flock Act (1911) Amendment Act, 1928.

For the removal of doubts, it is hereby declared that the expression “flock manufactured from rags” means flock which has been produced wholly or partly by tearing up woven or knitted or

(c) Rag Flock Regulations, 1912; S.R. and O., 1912, No. 578.

(d) *Cooper v. Swift*, [1914] 1 K.B. 253; 38 Digest, 222, 541.

(e) *Balmforth v. Chadburn*, [1927] 1 K.B. 663; 38 Digest 222, 543.

(f) 13 Halsbury's Statutes 1193.

felted materials, whether old or new, but does not include flock obtained wholly in processes of the scouring and finishing of newly woven or newly knitted or newly felted fabrics.

As to the making of any article of upholstery, cushions, or bedding, it was held that the restuffing of a mattress with the old flock to which no new flock was added, was not making an article of bedding(*g*), but where a completely new cover was put on a mattress containing rag flock, it was held to be making such an article(*h*). The sale of second-hand articles containing rag flock does not come within the provisions of the Acts(*i*).

In order to ascertain whether on any premises there is any rag flock which does not conform to the standard of cleanliness laid down by the Regulations, subsection (5) of section 1 of the Act of 1911, *infra*, gives power of entry to the medical officer of health, sanitary inspector or other officer of the sanitary authority, in order to examine any rag flock and to take samples for chemical analysis.

Section 1(5), Rag Flock Act, 1911.

- (5) It shall be the duty of a sanitary authority to enforce the provisions of this Act within their district, and for that purpose the medical officer of health, the sanitary inspector, or any other officer whom the sanitary authority may appoint, shall have power, if so authorised by the sanitary authority, to institute and carry on any proceedings which the sanitary authority is authorised to institute and carry on under this Act, and to enter at all reasonable times any premises in which he has reasonable cause to believe that an offence under this Act is being committed, and to examine and take samples for the purposes of analysis of any flock found therein :

Provided that, where a sample is so taken, the occupier of the premises may require the officer taking the sample to divide it into two parts and to mark, seal, and deliver to him one part.

If any person wilfully obstructs any such officer in the execution of his powers under this section, he shall be liable on summary conviction to a fine not exceeding five pounds.

It will be observed that the sample must be divided into two parts, one being retained by the occupier of the premises where the rag flock is sampled. The sample should be a well-mixed sample of the consignment of flock, and it should be divided into approximately equal parts, each about 8 ozs. in weight. The two portions of the sample should be placed in card-board boxes or stout paper envelopes, sealed with wax, and labelled with the necessary particulars. The portion

retained by the inspector should be sent to the public analyst for analysis. In some areas it is the practice to divide the sample of flock into three, instead of two, parts, similarly to the procedure followed when sampling articles of food for analysis, and this practice has much to commend it, as in case of dispute, it is possible for the court to arrange for the final portion of the sample to be examined by an independent analyst.

Where proceedings are taken against a person for an infringement of the Act, subsection (3) of section 1, *infra*, enables such person to rely upon a warranty.

Section 1(3), Rag Flock Act, 1911.

(3) Where, in any proceeding against a person charged with an offence under this Act, it is proved that an offence under this Act has been committed, but that the person charged with the offence—

(a) purchased the flock in respect of which the offence was committed from a person resident within the United Kingdom who sold the flock under a warranty that it complied with the prescribed standard of cleanliness; and

(b) took reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty;

the person so charged shall be entitled upon an information duly laid by him to have the person who gave the warranty brought before the court, and that person may be summarily convicted of the offence, and the person originally charged shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, also be liable to pay any costs incidental to the proceedings.

Where rag flock which does not conform to the prescribed standard is found on any premises, it is deemed to be intended for sale or for use in the manufacture of upholstery, etc., unless the contrary is proved(*h*).

(*h*) Sect. 1(4), Rag Flock Act, 1911; 13 Halsbury's Statutes 949.

CHAPTER 15.

SHOPS.

The Shops Acts, 1912 to 1938(a), relate mainly to the closing of shops at specified times, hours of employment and meal times for shop assistants, weekly half-holidays, and the employment of young persons under the age of 18 years. Such matters cannot be classed as coming within the scope of the present volume, which is confined to sanitary administration, and they are not therefore referred to in this chapter.

The Shops Act, 1934(b), contains provisions designed to promote the health and comfort of shop workers, relating to—

- ventilation and temperature ;
- sanitary conveniences ;
- lighting ;
- washing facilities ;
- facilities for taking meals ; and
- seats for female shop assistants ;

and these matters will now be considered in detail.

GENERAL.

(a) **Operation of Act.**—The Shops Act, 1934, applies to England and Wales, including London, and came into operation on the 30th of September, 1934(c).

(b) **Enforcement of Act.**—The Shops Acts, 1912 to 1938, are enforced—

- (i)—as respects the City of London, by the common council ;
- (ii)—as respects any municipal borough, by the council of the borough ;
- (iii)—as respects any urban district with a population according to the returns of the last published census for the time being of twenty thousand or upward, by the district council ; and
- (iv)—elsewhere, by the county council(d).

The provisions of the Act of 1934, however, relating to the ventilation and temperature of shops and to sanitary conveniences(e), are administered by sanitary authorities as

(a) 8 Halsbury's Statutes 613, 628, 647 ; 27 Halsbury's Statutes 226.

(b) 27 Halsbury's Statutes 226.

(c) Sect. 18(4), Shops Act, 1934 ; 27 Halsbury's Statutes 240.

(d) Sect. 13(2), Shops Act, 1912 ; 8 Halsbury's Statutes 621.

(e) Sects. 10(1) and 10(2) ; 27 Halsbury's Statutes 225.

part of their duties under the Public Health Act, in accordance with section 13(3), *infra*.

Section 13, Shops Act, 1934.—Enforcement.

- (3) It shall be the duty of the sanitary authority for every district as part of their duties under the Public Health Acts to enforce the provisions of this Act relating to ventilation and temperature of shops, and to sanitary conveniences, and any inspector appointed by such an authority shall for the purposes of his powers and duties have in relation to shops all the powers conferred in relation to factories and workshops on inspectors by section one hundred and nineteen of the Factory and Workshop Act, 1901, and that section and section one hundred and twenty-one of the same Act shall apply accordingly.

The expression "sanitary authority" means the council of a county borough, or the council of a borough, urban or rural district, and in London, the Common Council of the City of London and the metropolitan borough councils(f).

The enforcement of the provisions of the Act relating to the health and comfort of shop works may be summarised as follows :—

(1) *Enforced by sanitary authorities :—*

county borough councils ;
borough councils ;
urban district councils ;
rural district councils ;
common council of the City of
London ; and
metropolitan borough councils.

Provisions relating to—
1—Ventilation ;
2—Temperature ; and
3—Sanitary
conveniences.

(2) *Enforced by Shops Acts authorities :—*

county borough councils ;
borough councils ;
urban district councils where popu-
lation is not less than 20,000 ;
county councils ;
common council of City of London ;
and
metropolitan borough councils.

4—Lighting ;
5—Washing facilities ;
6—Facilities for taking
meals ;
7—Seats for female
shop assistants.

The division of responsibility as regards the enforcement of the above provisions is somewhat unfortunate, as in many areas it will necessitate the officers of two different authorities visiting the shop for the purpose of enforcing provisions designed for promoting health and comfort. In districts where one and the same authority is responsible for the whole of the above items (county boroughs, boroughs and certain

of the larger urban districts), it is desirable that the sanitary staff should deal with the whole, even if they are not responsible for the enforcement of the remainder of the provisions of the Shops Acts.

DEFINITION OF "SHOP."

In the Shops Act, 1934, the expression "shop"—

means a shop as defined by the Shops Act, 1912, and any wholesale shop and includes any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant(g).

Under the Shops Act, 1912—

the expression "shop" includes any premises where any retail trade or business is carried on(h);

the expression "retail trade or business" includes the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement(h).

There is no definition of the term "warehouse." It appears, however, from the wording of the section that it relates to the storage of goods for sale, as opposed to a shop where such goods are actually sold. In this respect "warehouse" under the Shops Act would appear not to include premises used for the storage of goods for safe custody, such goods not being intended for sale.

It was held in two cases(i) concerning beach stalls, where mechanical contrivances by which the public could play games of mixed chance and skill for prizes of chocolates, etc., and where they paid an entrance fee, that such premises were not shops within the meaning of the Shops Acts. Lord Treventhin, C.J., said: "*Prima facie* a shop is a place where goods are sold by retail and stored for sale"(k), and Avery, J., said: "It seems to me to be quite clear that the ordinary dictionary meaning of 'shop' is a place where ordinary retail selling and the serving of customers takes place"(l). A shop may include a place used for storing goods as well as for their sale(m), but in the same case it was held that a structure which resembled a booth or stall, having no stable or substantial

(g) Sect. 15(1), Shops Act, 1934; 27 Halsbury's Statutes 238.

(h) Sect. 19(1), Shops Act, 1912; 8 Halsbury's Statutes 624.

(i) *Dennis v. Hutchinson*, and *Trafford v. Hutchinson*, [1922] 1 K.B. 693; 24 Digest 930, 209.

(k) *Ibid.*, at p. 697.

(l) *Ibid.*, at p. 698.

(m) *Pope v. Whalley* (1865), 6 B. & S. 303, *per* Mellor, J., at p. 313; 33 Digest 555, 377.

character, no room for customers within it, nor means of sheltering or protecting goods from the weather or depredators, was not a shop within the meaning of section 13 of the Towns Improvement Clauses Act, 1847(*n*). It is not necessary for premises to be a shop, that goods should be actually on the premises(*o*). For example, a coal merchant's branch office, where orders only are taken and no coal is kept, is a shop within the meaning of the Act(*p*). There has been no decision as to whether a railway book stall is a "shop," although the point has been considered(*q*). Hotels may or may not be "shops" according as to whether any portion is used by non-residents. Where an hotel contained a restaurant which was used both by residents and non-residents, the portion used as such was held to be a "shop" and the kitchen used for the preparation of the food was part of the shop(*r*). Where a dairyman had affixed an automatic machine to his shop door so that milk might be obtained after the shop was closed, the place where the sale of milk occurred was held to be a shop(*s*). In a refreshment house, both the place where the customers are served and the kitchen where food is prepared, constitute a shop within the meaning of the Act(*t*).

The expression "wholesale shop" in the definition of shop in the Shops Act, 1934, *supra*, means—

premises occupied by a wholesale dealer or merchant where goods are kept for sale wholesale to customers resorting to the premises(*u*).

The effect of the definition in the Act of 1934 is to give the term "shop" in the Act of 1912 an extended meaning, and in dealing with the provisions of the former Act relating to the health and comfort of shop workers, this extended definition should be borne in mind.

From the above cases it will be clear that the term "shop," when used in the Shops Act, 1934, includes premises where any retail trade or business is carried on, any wholesale shop, a warehouse used in connection with a retail trade or business or by any wholesale dealer or merchant, and it includes premises where no actual goods are kept, hotel restaurants where non-residents are served, and ordinary cafes or refresh-

(*n*) 13 Halsbury's Statutes 536.

(*o*) *Stallard v. Marks* (1878), 3 Q.B. 412; 30 Digest 83, 644.

(*p*) *Wallace v. Dixon*, [1917] 2 I.R. 236; 24 Digest 928, *p*.

(*q*) *Ward v. W. H. Smith and Son*, [1913] 3 K.B. 154; 24 Digest 932, 215.

(*r*) *Gordon Hotels, Ltd. v. L.C.C.*, [1916] 2 K.B. 27; 24 Digest 928, 193.

(*s*) *Willesden U.D.C. v. Morgan*, [1915] 1 K.B. 349; 24 Digest 933, 222.

(*t*) *Melluish v. L.C.C.*, [1914] 3 K.B. 325; 24 Digest 928, 194.

(*u*) Sect. 15(1), Shops Act, 1934; 27 Halsbury's Statutes 238.

ment rooms ; lending libraries are now included in the definition of "shop" (v). From the decided cases, it would seem that premises such as laundry receiving depots, are not "shops" within the meaning of the Act.

PROVISIONS RELATING TO HEALTH AND COMFORT OF SHOP WORKERS.

Section 10, subsections (1) to (5) of the Shops Act, 1934, *infra*, contain provisions designed to promote the health and comfort of shop workers.

Section 10, Shops Act, 1934.—Provisions as to sanitary or other arrangements in shops.

- (1) In every part of a shop in which persons are employed about the business of the shop—
 - (a) suitable and sufficient means of ventilation shall be provided and suitable and sufficient ventilation shall be maintained ;
 - (b) suitable and sufficient means shall be provided to maintain a reasonable temperature and a reasonable temperature shall be maintained.
- (2) In every shop, not being a shop exempted from the provisions of this subsection, there shall be provided and maintained suitable and sufficient sanitary conveniences available for the use of persons employed in or about the shop.
- (3) In every part of a shop in which persons are employed about the business of the shop, suitable and sufficient means of lighting shall be provided, and every such part of a shop shall be kept suitably and sufficiently lighted.
- (4) In every shop, not being a shop exempted from the provisions of this subsection, there shall be provided and maintained suitable and sufficient washing facilities available for the use of persons employed in or about the shop.
- (5) Where persons employed about the business of a shop take any meals in the shop, there shall be provided and maintained suitable and sufficient facilities for the taking of those meals.

.....
 The expression "employed about the business of the shop" is defined in section 15(4), as follows :—

For the purposes of this Act employment in connection with a wholesale shop or a warehouse occupied by a wholesale dealer or merchant which is neither—

- (a) employment within the premises, nor
- (b) employment in the collection or delivery of goods or in attendance upon customers or in carrying messages or running errands,

shall not be deemed to be employment about the business of a shop ; but, save as aforesaid, any employment in the service of the occupier of a shop upon any work, whether within the shop or outside it, which is ancillary to the business carried on at the shop shall be deemed to be employment about the business of the shop, and that expression shall be construed accordingly.

The expression "suitable and sufficient," used in each of the subsections, *supra*, is defined in section 15(1) of the Shops Act, 1934, as follows:—

"Suitable and sufficient" means, in relation to any shop or part of a shop, suitable and sufficient having regard to the circumstances and conditions affecting that shop or part.

It is clear from this definition that each shop must be considered on its merits and what would be suitable and sufficient in one case might not be so in another. This would apply in the case of shops carrying on the same trade or business.

It will be observed that subsections (2) and/or (4) of section 10, *ante*, p. 360, relating to sanitary conveniences and washing facilities respectively, do not apply in the case of a shop which has been exempted therefrom in accordance with subsection (6), *infra*.

Section 10, Shops Act, 1934.—Provisions as to sanitary and other arrangements in shops.

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- (6) A shop shall be exempted from the provisions of subsection (2) or of subsection (4) of this section if there is in force a certificate exempting that shop therefrom granted by the authority whose duty it is to enforce those provisions, respectively, and any such certificate shall remain in force until it is withdrawn by the authority, but no such certificate shall be granted with respect to any shop unless the authority are satisfied that by reason of restricted accommodation or other special circumstances affecting the shop it is reasonable that such a certificate should be in force with respect thereto, and that suitable and sufficient sanitary conveniences or washing facilities, as the case may be, are otherwise conveniently available, and, subject as hereinafter provided, a certificate in force with respect to any shop shall be withdrawn if the authority at any time cease to be so satisfied as aforesaid:

Provided that, if the occupier of a shop is aggrieved by the withdrawal of such a certificate, he may appeal to the county court for the district in which the shop is situated and that court may make such order concerning the certificate as appears to the court, having regard to the matters aforesaid, to be just and equitable.

.....

It should be made clear that the sanitary conveniences and washing facilities must be provided *in the shop*, unless an exemption certificate has been granted under subsection (6), *supra*. It is not sufficient to make arrangements for such conveniences and facilities in other premises, or at public conveniences. Where application is made for a certificate of exemption, the local authority must be satisfied that it is impracticable or unreasonable to insist on the provision

of sanitary conveniences or washing facilities in the shop by reason of restricted accommodation or other special circumstances *and* that suitable and sufficient conveniences and facilities are conveniently available elsewhere. It should be noted that it is not sufficient that the provision of sanitary conveniences or washing facilities is difficult on account of lack of space or otherwise, such conveniences or facilities *must* be available in close proximity to the shop and be reasonably accessible to the shop workers. The certificate may apparently be issued either to the owner or the occupier of the shop, as the exemption is in respect of the premises and not a particular person.

It should be remembered that subsection (2) is to be enforced by the sanitary authority and subsection (4) by the Shops Act authority, so that it is possible that two certificates may be in force in respect of one shop, but issued by different authorities. Whether regard should be paid both to the provision of sanitary conveniences and washing facilities, when considering an application for an exemption certificate in respect of either or both of these requirements, will no doubt depend upon the individual circumstances of each case, but cases will arise where it may be reasonable to grant an exemption certificate in respect of one requirement and not in regard to the other. In areas where two authorities administer these provisions, it is obviously desirable that they should work in close co-operation in dealing with applications for exemption certificates. In such circumstances the sanitary authority upon receiving an application for exemption under subsection (2) should always enquire from the Shops Act authority whether an application for a certificate has been made in respect of subsection (4), and *vice versa*, so that the two applications may be considered together. Generally speaking, the provision of sanitary conveniences should take priority, but in practice it will often be found possible to provide both sanitary conveniences and washing facilities, by enlarging slightly the watercloset compartment so as to accommodate a washhand basin, although there may be cases where this is not practicable or desirable.

A certificate granted under this subsection remains in force until withdrawn by the local authority, and there is no provision for its periodical renewal, but local authorities should review from time to time the certificates in force, in order to ascertain whether the conditions in any particular case have altered sufficiently to make it reasonable to withdraw the certificate and insist upon the provision *within the shop* of the necessary accommodation.

It should be observed that whilst there is no right of appeal, either by the owner or the occupier of a shop, against the refusal of a local authority to grant an exemption certificate, the *occupier* (but not the owner) may appeal to the county court against the withdrawal of a certificate already granted. This rather inequitable provision should be borne in mind whenever applications for exemption certificates are issued. Unless there are very clear grounds for granting such a certificate, the application should be refused, and great care should be taken not to issue a certificate until every means of providing the necessary accommodation in the shop itself has been examined and found impracticable. In this connection the proviso to subsection (7) of section 10 of the Shops Act, 1934, *infra*, should be borne in mind, which would appear to allow a person upon whom a notice has been served requiring the provision of either sanitary accommodation or washing facilities, to argue that no contravention of the Act had occurred. Having granted an exemption certificate there is no reason why a local authority should not withdraw it, even though the circumstances are unaltered, but it must be remembered that in such a case, the occupier has the right of appeal to the county court, and it would probably be difficult to justify the inconsistency of the local authority's actions. Hence, applications for exemption certificates should be considered with caution.

Where a local authority (sanitary authority or Shops Acts authority, as the case may be), are of opinion that as respects any particular shop, there is a contravention of the provisions of section 10, *supra*, relating to the health and comfort of shop workers, subsection (7), *infra*, requires the authority to serve a notice on the owner or occupier of the shop, requiring him, within such time as is specified in the notice, to take such action as may be specified therein for the purpose of complying with the above provisions.

Section 10, Shops Act, 1934.—Provisions as to sanitary or other arrangements in shops.

-
- (7) If it appears to the authority whose duty it is to enforce any provision of this section that there has been, in the case of any shop, a contravention of that provision, the authority shall, by notice served on the owner or occupier of the shop, require him to take, within such time as may be limited by the notice, such action as may be specified in the notice for the purpose of securing compliance with the said provision, and, if any person served with such a notice fails to comply with the requirements thereof, he shall be liable on summary conviction to a fine not

quent conviction in respect of the same requirement, to a fine not exceeding fifty pounds or five pounds for every day since the first conviction in respect of that requirement, whichever is the greater :

Provided that it shall be a defence to any proceedings under this subsection to prove that there was no contravention of the provisions of this section, or that the requirements of any such notice as aforesaid were, within a reasonable time after service of the notice, complied with in so far as they were necessary to secure compliance with the provisions of this section.

It should be observed that the time specified in the notice need not be a "reasonable" one, as is frequently the case, but at the same time, it is a good defence to any proceedings taken under the subsection to prove that the requirements of the notice were complied with within a reasonable time. It is essential therefore that adequate time should be allowed for the completion of the work.

It must be noted again, that in many areas, the power to serve notices and institute legal proceedings under subsection (7), *supra*, is vested in two different authorities, and co-operation between the two is most desirable before any such action is carried out. The duty of serving notice is obligatory upon local authorities, provided that they are satisfied there is a contravention of the Act.

(a) **Ventilation and temperature.**—The ventilation of shops is a matter of considerable importance and there are many practical difficulties in connection with the matter, depending to a considerable extent upon the nature of the trade or business carried on in the shop. Questions of ventilation are bound up largely with the maintenance of a reasonable temperature, and care must be taken in securing proper means of ventilation not to lower the temperature to too low a figure.

The temperature of shops will also depend to a considerable extent upon the type of shop and the nature of the trade carried on. The object of the Act is to secure healthy conditions for the workers, and with this in view, the temperature should be sufficient to preserve a healthy atmosphere, with adequate air movement, both for the exit of foul air and the entrance of fresh air. At the same time the temperature should be such as will not affect the workers, either by heat or cold, and attention should be paid to the facilities for warming the shop in winter, and possibly of cooling it in the summer. Whilst it is impossible to lay down a definite hard and fast rule, a temperature of not less than 55 degrees Fahrenheit should be taken as a reasonable minimum to aim at, and in

of many shops in the summer months is much in excess of this figure.

(b) **Sanitary conveniences.**—The term “sanitary conveniences” is defined in section 90 of the Act of 1936, as meaning closets and urinals, and the expression “closet” includes privy. In shops, employing a large number of male assistants, adequate urinal accommodation should be provided in addition to waterclosets.

As to what is “suitable and sufficient” sanitary conveniences, will depend upon the circumstances of each individual case, but the greatest difficulty is likely to arise in dealing with small shops, where only a few assistants of both sexes are employed. Where there are a large number of shop assistants, it will be convenient to adopt the standard for factories and workshops, contained in the Sanitary Accommodation Order, 1938(a). This Order prescribes one water-closet for each twenty-five employees or less of one sex, and in shops employing one sex only, or where the numbers of assistants exceeds say six of each sex, little difficulty should arise as to the number of conveniences required. In many shops, however, the number of workers will be less than that figure, and difficulty will arise as to whether separate accommodation must be insisted upon. In this connection, it must be remembered that under the Factories Act, separate accommodation must be provided irrespective of the number of employees. At the same time, the practical difficulties of providing separate accommodation for shop workers will generally be greater than in the case of factories and workplaces, and this point must be borne in mind. Whilst it is impracticable to lay down a hard and fast rule applicable to all districts, and even to all cases within one area, every effort should be made to secure separate conveniences, and these should always be insisted upon where the assistants of each sex exceed two in number. In considering this matter, there is no reason why an exemption certificate should not be issued in respect of the provision of sanitary conveniences for one sex whilst at the same time a proper and separate watercloset is provided in the shop for the other sex, and it may be more desirable to carry out an arrangement of this kind, rather than allowing both sexes to use the same convenience.

Where application is made for the granting of a certificate of exemption, the alternative accommodation may take the form of—

(a) S.R. and O., 1938, No. 611; and see *ante*, p. 329.

- (i)—sanitary conveniences in another part of the same building but not in the shop itself; or
- (ii)—sanitary conveniences in an adjoining building; or
- (iii)—public sanitary conveniences.

Special difficulties are likely to arise in the case of small lock-up shops, where the amount of land available may be insufficient to provide sanitary conveniences. In such cases, it may be possible for the owner of a number of these shops to provide conveniences in some central and convenient situation which will serve the needs of a number of shops.

(c) **Lighting.**—The lighting of shops necessitates the provision of facilities for lighting during the hours of darkness, either in winter or during overtime. The lighting should be such that ordinary print (*e.g.* a newspaper) can be read without difficulty in all parts of the shop used by the shop workers.

(d) **Washing facilities.**—The provision of washing facilities may be dispensed with if a certificate of exemption is granted by the local authority under subsection (6) of section 10 of the Act of 1934 (see *ante*, p. 361). As in the case of sanitary conveniences, such a certificate can only be granted if alternative facilities are available. The remarks with regard to sanitary conveniences, apply to washing facilities, but generally speaking the latter is less important than the former, and where it might be reasonable to grant exemption in respect of washing facilities, it would not be so in regard to sanitary accommodation.

(e) **Facilities for taking meals**(*b*).—Subsection (5) of section 10 of the Act of 1934, only applies where any of the shop assistants take meals in the shop. Where facilities for this purpose are not available, the occupier may overcome the difficulty by prohibiting the taking of meals on the premises. The facilities for meals will usually take the form of a rest room or kitchen, apart from the actual shop itself, and the size and equipment will depend upon the number of assistants. In many of the larger shops, proper rest rooms and dining halls are provided, but in the smaller shops, it may be necessary to accept a room which is used for some other purpose, such as the storage of goods, or the packing of orders, etc. The suitability of the accommodation will depend entirely upon the number of assistants, and as with the other requirements, each case must be dealt with on its merits.

(b) As to the allowance of intervals for meals, see sect. 1(3) and Sched. I, Shops Act, 1912 : 8 Halsbury's Statutes 614, 625.

(f) **Seats for female shop assistants.**—Section 3 of the Shops Act, 1912, as extended by section 12 of the Shops Act, 1934, *infra*, requires the occupier of every shop where females are employed in the serving of customers, to provide seats for their use in the proportion of one seat to every three female assistants.

Section 3, Shops Act, 1912 (as extended by section 12, Shops Act, 1934).

—*Seats for female shop assistants.*

- (1) In all rooms of a shop where female shop-assistants are employed in the serving of customers, the occupier of the shop shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female shop-assistants employed in each room, and it shall be the duty of the occupier of the shop to permit the female shop-assistants so employed to make use of such seats whenever the use thereof does not interfere with their work, and the occupier shall in the prescribed manner and in the prescribed form give notice informing such shop assistants that they are intended to do so.
- (2) Any person failing to comply with the provisions of this section shall be guilty of an offence against this Act, and liable for a first offence to a fine not exceeding three pounds, and for a second or subsequent offence to a fine not less than one pound and not exceeding five pounds.

It will be observed that a notice in the prescribed form must be exhibited informing the female assistants that the seats are intended for their use, and in accordance with the Shops Regulations, 1939(c), the notice must be in the following form, but in lieu of exhibiting such a notice, a copy of it may be supplied to every person whom it affects.

SHOPS ACTS, 1912 to 1934.

Seats for female Shop Assistants.

NOTICE IS HEREBY GIVEN that seats are provided in this shop for Female Shop Assistants employed in the serving of customers, and that these assistants are intended to make use of the seats whenever the use thereof does not interfere with their work.

(Signed)

Occupier.

Address of shop.

APPORTIONMENT OF EXPENSES INCURRED IN EXECUTION OF WORKS.

Notices under section 10(7) of the Shops Act, 1934 (see *ante*, p. 363), may be served either on the owner or the occupier of a shop, and circumstances may arise where the necessary work having been carried out at the expense of the owner or

the occupier, such owner or occupier may consider that some or all of the amount should be paid by some other person having an interest in the premises. Section 11 of the Act of 1934, *infra*, provides for the apportionment of expenses in cases of this kind, and empowers the county court to make such order as may be considered just and equitable.

Section 11, Shops Act, 1934.—Apportionment of expenses.

If any person, being either the owner or the occupier of a shop, who has incurred or is about to incur any expense for the purpose of securing that the requirements of the last foregoing section are complied with with respect to the shop, alleges that the whole or any part of the expenses ought to be borne by any other person having an interest in the premises, he may apply to the county court for the district in which the shop is situated and that court may make such order concerning the expenses or their apportionment as appears to the court, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable, and any order made under this section may direct that any such contract as aforesaid shall cease to have effect in so far as it is inconsistent with the terms of the order.

In considering this section it must be noted that the expression "owner" has the same meaning(*d*) as in the Public Health Act, 1936, section 343(1)—

"Owner" means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent.

A lessor would not therefore be the "owner" within the above definition, but he would have a definite interest in the property and it might be proper for him to contribute towards the expenses of complying with section 10. In deciding a case under section 11, *supra*, the county court must have regard to all the circumstances of the case, including the terms of any contract between the parties, and the court may order that the terms of such a contract shall cease to have effect so far as they would be inconsistent with the ruling of the court. In the case of a shop held on lease by an occupier, the unexpired period of the lease will doubtless have a definite bearing on the apportionment of the expenses as between the lessor and lessee. The longer the period remaining unexpired, the greater the amount which should be paid by the lessee, and *vice versa*. Generally speaking, however, the decision will depend to a great extent upon the terms of the lease or tenancy agreement, and in many cases where the

(*d*) Sect. 15(1), Shops Act, 1934; 27 Halsbury's Statutes 238.

duty of carrying out structural alterations or complying with statutory requirements, is placed upon the lessee, it is unlikely that the court would interfere with such lease or agreement. The matter is, however, purely one affecting the parties concerned and local authorities are not directly interested in it. As a matter of general practice, most local authorities will serve notice upon the owners of shops, leaving to such owners the right of taking action under section 11, *supra*, where they consider the occupier or other interested party should contribute towards the cost of the work.

Where work is carried out and the expenses paid by the occupier of a shop, compensation cannot be claimed by the tenant at the expiration of the tenancy under Part I of the Landlord and Tenant Act, 1927(e), as improvements made in compliance with any statutory obligation do not involve the payment of compensation(f).

INSPECTION OF SHOPS.

(a) **Appointment of inspectors.**—Section 13(1) of the Shops Act, 1912, *infra*, empowers a local authority to appoint inspectors for the purpose of securing compliance with the provisions of the Act.

Section 13, Shops Act, 1912.—Powers and duties of local authorities.

- (1) It shall be the duty of every local authority to enforce within their district the provisions of this Act, and of the orders made thereunder or under any enactment repealed by this Act, and for that purpose to institute and carry on such proceedings in respect of failures to comply with or contraventions of this Act and such orders as aforesaid as may be necessary to secure the observance thereof, and to appoint inspectors; and an inspector so appointed shall, for the purposes of his powers and duties, have in relation to shops all the powers conferred in relation to factories and workshops on inspectors by section one hundred and nineteen of the Factory and Workshop Act, 1901, and that section and section one hundred and twenty-one of the same Act shall apply accordingly; and an inspector may, if so authorised by the local authority, institute and carry on any proceedings under this Act on behalf of the authority.
-

Section 13 of the Act of 1934(g), applies the provisions of section 13 of the Act of 1912, *supra*, to the enforcement of the former Act, except with respect to street trading, and the provisions relating to ventilation and temperature and to

(e) 10 Halsbury's Statutes 375.

(f) Sect. 2(1) (b), Landlord and Tenant Act, 1927; 10 Halsbury's Statutes 376.

(g) 27 Halsbury's Statutes 237.

sanitary conveniences. Section 13(3) of the Shops Act, 1934 (see *ante*, p. 357), which imposes upon sanitary authorities the duty of enforcing the provisions relating to ventilation, temperature and sanitary conveniences, gives to an inspector appointed under the Public Health Acts, in relation to shops, all the powers conferred on inspectors in relation to factories by virtue of section 123 of the Factories Act, 1937(*h*).

The combined effect of the above provisions is that a local authority, acting as the Shops Act authority, have power to appoint inspectors in accordance with section 13 of the Act of 1912, both as respects that Act and the Act of 1934. So far as ventilation, temperature and sanitary conveniences are concerned, a local authority, acting as the sanitary authority, have inspectors already appointed to enforce the Public Health Acts, and those officers are empowered to deal with the above matters also. In both cases, the powers conferred upon inspectors in relation to factories and workshops, contained in section 123 of the Factories Act, 1937 (see *ante*, p. 349), apply.

An inspector appointed by a Shops Act authority must be furnished with a certificate of appointment in the form prescribed(*i*).

As has been pointed out previously (see *ante*, p. 357), it is most desirable that in areas where the local authority are both the Shops Acts and the Sanitary Authority, the inspections of shops with regard to the enforcement of the provisions of the Act of 1934 relating to the health and comfort of shop workers, should be dealt with by one officer, and the sanitary inspector is undoubtedly the most suitable for the purpose. Where another officer (*e.g.* police officer) deals with the main provisions of the Shops Acts, relating to closure and hours of employment, etc., there is no reason why the local authority should not appoint the sanitary inspector as the officer for the whole of the provisions relating to the health and comfort of shop assistants, to the exclusion of the other officer.

(b) **Methods of inspection.**—The inspection of shops should be carried out so as to satisfy the inspector that—

- (i)—the necessary fittings, apparatus, etc., have been provided ;
and that
- (ii)—such fittings, apparatus, etc., are maintained in proper condition.

(*h*) 30 Halsbury's Statutes 284.

(*i*) Form V. Shops Regulations. 1912 : S.R. and O., 1912, No. 316.

The details respecting each shop require to be recorded in such a way as to form a register of all the shops in the area.

When inspecting shops, it is desirable for the sanitary inspector to have regard to other matters affecting these premises, *e.g.* unsound meat and food, marking of imported foodstuffs, Pharmacy and Poisons Act, 1933(*k*), factories and workplaces, and any other matters which may call for attention by the local authority.

(*k*) 26 Halsbury's Statutes 562.

CHAPTER 16.

CANAL, BOATS.

Canal boats used as dwellings are subject to control by sanitary authorities, in accordance with Part X of the Act of 1936, which takes the place of the Canal Boats Acts of 1877(a) and 1884(b), and it is the duty of every registration authority and every local authority within whose district any part of a canal passes, to carry into effect the provisions of Part X, *supra*, and any Regulations made thereunder(c).

DEFINITIONS.

The term "canal" is defined by section 258 of the Act of 1936 as follows—

"canal" includes any river, inland navigation or lake, and any other waters situate wholly or in part within a county or county borough, whether those waters are or are not within the ebb or flow of the tide.

Section 258 also defines the following terms:—

"canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal, not being—

(a) a sailing barge which belongs to the class generally known as "Thames sailing barge" and is registered under the Merchant Shipping Acts, 1894 to 1928, either in the port of London or elsewhere; or

(b) a sea-going ship so registered; or

(c) a vessel used for pleasure purposes only;

"master," in relation to a canal boat, means the person having command or charge of the boat;

"owner," in relation to a canal boat, includes a person who, though only the hirer of the boat, appoints the master and other persons working the boat.

Section 343 of the Act of 1936 gives to the term "vessel" the same meaning as in the Merchant Shipping Act, 1894, section 742(d), defining the term as "including any ship or boat or any other description of vessel used in navigation."

The expression "wide boat" means a boat not less than seven feet six inches beam, and a "narrow boat" is less than

(a) 13 Halsbury's Statutes 788.

(b) 13 Halsbury's Statutes 803.

(c) Sect. 249(2), Public Health Act, 1936; 29 Halsbury's Statutes 482.

that beam(e). A "fly" boat is one plying by night as well as by day, but the term is not defined.

REGISTRATION AUTHORITIES.

Canal boats may not be used as dwellings until they are registered with the appropriate authority, and section 249(1) of the Act of 1936(f), constitutes the following as "registration authorities" for the purposes of Part X of that Act:—

- | | |
|-----------------------------|--|
| (a) local authorities | } whose districts include or abut on,
some part of the canal. |
| (b) port health authorities | |

Provided, however, that a local authority are not the registration authority for a canal if they are, or are represented on, a port health authority who are a registration authority for that canal. Section 2 of the Act of 1936 (see *ante*, p. 31) empowers the Minister of Health to constitute a port health authority, and where such an authority has been created, it is the registration authority with respect to canal boats, to the exclusion of the local authority or authorities abutting up on the canal.

Part X of the Act of 1936 extends to London(g).

REGISTRATION OF CANAL BOATS.

Section 250 of the Act of 1936, *infra*, prohibits the use as a dwelling of any canal boat unless it has been registered with a registration authority for the canal upon which it travels.

Section 250, Public Health Act, 1936.—Canal boats used as dwellings to be registered.

A canal boat shall not be used as a dwelling—

- (a) unless it is duly registered under this Part of this Act by some registration authority for the canal on which the boat is accustomed or intended to ply;
- (b) for a greater number of persons, or a greater number of persons of either sex or any particular age, than is permitted by the certificate of registration:

Provided that a canal boat which immediately before the commencement of this Act was registered under the corresponding enactments repealed by this Act shall be deemed to have been registered under this Part of this Act, and the certificate of registration shall have effect accordingly.

The conditions governing the registration of canal boats are prescribed by regulations made by the Minister of Health in accordance with the provisions of section 251, *post*, p. 374.

(e) Reg. No. 14, Canal Boats Regulations, 1878.

(f) 29 Halsbury's Statutes 482.

Section 251, *Public Health Act, 1936.*—*Regulations as to canal boats.*

- (1) It shall be the duty of the Minister to make regulations—
 - (a) with respect to the registration of canal boats, certificates of registration and the fees to be charged in connection with registration ;
 - (b) with respect to the lettering, marking and numbering of canal boats ;
 - (c) for fixing the number, age and sex of the persons who may be permitted to dwell in canal boats, regard being had to cubic space, ventilation, provision for the separation of the sexes, general healthiness and convenience of accommodation ;
 - (d) for promoting cleanliness in, and ensuring the habitable condition of, canal boats ; and
 - (e) for preventing the spread of infectious disease by canal boats.
- (2) Regulations made under this section shall be laid before Parliament.

The Minister has not yet made regulations under section 251, *supra*, but the Regulations made in 1878(*h*), as amended by the Canal Boats (Amendment) Regulations, 1925(*i*), are included in the present chapter, as likely to be the basis of any new regulations issued.

Regulations 1 to 6, *infra*, detail the rules relating to the registration of canal boats.

Canal Boats Regulations, 1878 (as amended in 1925).

- 1—Every owner of a canal boat who may desire to register the boat as a dwelling shall apply to a registration authority having a district abutting on the canal on which the boat is accustomed or intended to ply.

The owner in making such application shall inform the registration authority of a time and place at which the boat may be examined with a view to registration ; and shall also furnish such other information as the registration authority may require in relation thereto.

- 2—Every registration authority shall from time to time appoint or employ a fit and proper person to examine and report upon the several canal boats the owners whereof may, in pursuance of the regulation in that behalf, have made application to the authority for registration, and may pay him a reasonable remuneration for such examination and report.

Every person so appointed or employed shall ascertain and duly record with respect to the boat and the cabin or cabins thereof the several particulars requisite to enable him to furnish the information to be set forth in a report which shall be in the Form A in the schedule to these regulations, and shall be submitted to the registration authority at their next ordinary meeting, or at a special meeting to be called for that purpose.

3—The following conditions shall be complied with before a canal boat is registered, that is to say—

- (a) The boat shall contain a cabin or cabins, clean, in good repair, and so constructed as to be capable of being maintained at all times weatherproof, dry and clean.
- (b) The interior of any after cabin intended to be used as a dwelling shall contain not less than 180 cubic feet of free air space, and the interior of any fore cabin, if intended to be so used, shall contain not less than 80 cubic feet of free air space.
- (c) Every cabin, if intended to be used as a dwelling, shall be provided with sufficient means for the removal of foul, and the admission of fresh air exclusive of the door or doors and of any openings therein.
- (d) Every cabin, if intended to be used as a dwelling, shall be so constructed or fitted as to provide adequate and convenient sleeping accommodation for the persons allowed by these regulations to dwell in the boat;
- (e) If the boat be a "narrow" boat, every cabin intended to be used as a dwelling shall be so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulk-head, and no shut-up cupboard above the cross-bed on more than one side of the cabin.
- (f) One cabin at the least in the boat shall be furnished with a suitable stove and chimney in a safe and convenient situation, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.
- (g) The boat shall be properly furnished or fitted with lockers, cupboards and shelves of suitable construction and adequate capacity, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.
- (h) The boat, if intended to be ordinarily used for the conveyance of any foul or offensive cargo, shall contain between the space to be occupied by such cargo and the interior of any cabin intended to be used as a dwelling, two bulkheads of substantial construction, which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space, and the one next adjoining the space to be occupied by the cargo shall be water-tight.
- (i) The boat shall be furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

In every case where the conditions hereinbefore prescribed have been complied with, the registration authority shall cause the boat to be registered, in the book in the Form B. in the schedule to these regulations, as a dwelling for the number of persons allowed by the said regulations to dwell therein.

4—The owner of a canal boat shall maintain it in the condition required for the purpose of registration under this regulation,

and if such owner be convicted of default in so doing the court of summary jurisdiction may (in lieu of or in addition to imposing a penalty) order the suspension or cancellation of the registration.

- 5—Each of the two certificates of registration which, in pursuance of the provisions of section 3 of the Canal Boats Act, 1877, the registration authority upon registration of a canal boat under that Act, shall give to the owner of the boat, shall, in addition to such other particulars as may seem fit to the authority, contain the several particulars set forth in Form C. in the schedule to these regulations.
- 6—Every owner of a canal boat applying for registration shall before the delivery of the certificates, pay to the registration authority the sum of five shillings, as a fee in connection with the registration of the boat.

It will be observed that every registration authority must appoint a suitable person to act as examining officer for canal boats submitted to the authority for registration. It is the usual practice to appoint the sanitary inspector as the officer for this purpose. When examining a canal boat, the sanitary inspector or other appointed officer, must prepare a report in the following form.

CANAL BOATS REGULATIONS, 1878—SCHEDULE.

FORM A.

Examining Officer's Report on Canal Boats.

- 1—Time and place of examination of canal boat.
- 2—Name, or, if there be no name, the number of the canal boat examined.
- 3—Christian name, surname, and address of owner. (NOTE 1).
- 4—Christian name, and surname of master.
- 5—Route along which the boat is accustomed or intended to ply.
- 6—Nature of the traffic in which the boat is accustomed or intended to be employed.
- 7—Mode of propulsion ;
and whether a " wide " or " narrow " boat ;
and whether to be used as a " fly " boat worked by shifts.
- 8—Number of cabins in the boat.
- 9—Dimensions and cubical capacity of the cabin or cabins :—
Rule of measurement and of deduction adopted :—(NOTE 2).

ft. in.

After cabin	{	Height
		Length
		Width
		Gross cubical capacity
		Net cubical capacity or free air space
Fore cabin	{	Height
		Length
		Width
		Gross cubical capacity

10—Description of the construction, furniture, and fittings of the boat, and the several cabins thereof, as regards the following details, *viz.* :—

- (a) Whether each cabin is clean, in good repair, weatherproof, and capable of being kept dry and clean.
- (b) What means are provided in each cabin for the removal of foul, and the admission of fresh air, exclusive of the door or doors and of any opening therein.
- (c) What provision is made in respect of lockers, cupboards, and shelves in the boat.
- (d) What provision is made for sleeping accommodation in each cabin.
- (e) If the boat be a "narrow" boat; whether every cabin intended to be used as a dwelling is so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulkhead, and no shut-up cupboard above the cross-bed on more than one side of the cabin.
- (f) Whether each or either cabin contains a stove and chimney of suitable construction and situation.
- (g) If the boat be intended to be used for the conveyance of any foul or offensive cargo; whether there are between the space to be occupied by such cargo, and the interior of each cabin intended to be used as a dwelling, two bulkheads of substantial construction, of which the one next adjoining the space to be occupied by the cargo shall be watertight, and which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space.
- (h) Whether the boat is furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

General observations as to the fitness of the boat for registration as a dwelling :—

Dated this

day of

19

(Signed)

Examining Officer.

NOTES.

- 1—If the boat is owned by a partnership firm, or by a company or association, corporate or incorporate, state the name of the firm, company, or association, and their principal office or place of business.
- 2—Here state which of the following rules has been adopted in determining the internal dimensions and cubical capacity of the cabin or cabins; distinguishing, in each case, where necessary, the rate of deduction.

Rule A (for "wide" boats).

Measure :—

The height from the floor to the roof in the middle of the cabin.

The length from the bulkhead to the door of the opposite cupboard.

The width across the cabin at the bulkhead.

The product of the height, length, and width thus measured will represent, for the purpose of this Rule, both the gross and the net cubical capacity of free air space.

Rule B (for "narrow" boats).

Measure :—

The height from the floor to the roof in the middle of the cabin.

The length from the bulkhead to the end of the cabin at the side of the doorway.

The greatest width from side to side of the boat at the bulkhead.

The product of the height, length, and greatest width thus measured will represent the gross cubical capacity of the cabin.

To obtain the net cubical capacity or free air space of the cabin, deduction from the gross cubical capacity should be made in accordance with the following directions :—

1—If the cabin have only the following shut-up cupboards or lockers, *viz.* : a table cupboard, a side bed-locker or cupboard, a cross bed-locker or lockers, and a cupboard above the cross-bed—

(a) If the height of the cabin be not less than five feet, deduct 1/5th ;

(b) If the height of the cabin be less than five feet, deduct 1/4th.

2—If the cabin have only the following shut-up cupboards or lockers, *viz.* : a table cupboard, a cross-bed locker or lockers, and a cupboard above the cross-bed—

(a) If the height of the cabin be not less than five feet, deduct 1/6th ;

(b) If the height of the cabin be less than five feet, deduct 1/8th.

3—If the cabin have only the following shut-up cupboards or lockers, *viz.* : a table board and a cupboard, above the cross-bed—

(a) If the height of the cabin be not less than five feet, deduct 1/10th ;

(b) If the height of the cabin be less than five feet, deduct 1/12th.

Care should be taken in calculating the cubic capacity of the cabins, and the rules prescribed above should be used in every case.

If a canal boat conforms to the conditions of registration prescribed by the regulations, any registration authority for the canal on which the boat is accustomed or intended to ply, must, upon payment of the prescribed fee (see regulation 6, *supra*), register the boat (*k*).

Registration certificate.—Section 252(2) of the Act of 1936, *infra*, requires the registration authority to supply to the owner of a canal boat duly registered by them, a certificate of registration, in duplicate.

Section 252, Public Health Act, 1936.—Registration of canal boats and certificates of registration.

-
- (2) Upon registering a canal boat, the registration authority shall give to the owner of the boat a certificate of registration in duplicate, identifying the owner and the boat and stating the place to which the boat is registered as belonging, the number, age and sex of the persons permitted to dwell in the boat, and

such other particulars as may be required by the regulations, or as the authority think desirable.

The Certificate of Registration must be in the form prescribed by the Canal Boats Regulations, 1878, Form C in the Schedule.

One of the certificates must be in the custody of the master of the canal boat, in accordance with subsection (3) of section 252, *infra*.

Section 252, Public Health Act, 1936.—Registration of canal boats and certificates of registration.

- (3) The master of a canal boat shall have the custody of one of the duplicate certificates of registration, but, on his ceasing to be the master of the boat, or on the boat ceasing to be registered, he shall deliver that certificate to the owner of the boat, or to such person as the owner may direct, and, if he unlawfully detains it, he shall be liable to a fine not exceeding forty shillings, and the court may order him to deliver up the certificate.

The master must produce the certificate of registration to a properly authorised officer of a local authority, in accordance with subsection (3) of section 255 of the Act of 1936, *infra*, and if he fails to do so, the master is deemed to have obstructed the officer by whom the requisition was made^(l).

Section 255, Public Health Act, 1936.—Power to enter and inspect canal boat.

- (3) The master of the canal boat shall, if required by such an inspector or officer as aforesaid so to do, produce to him the certificate of registration, if any, of the boat, and permit him to examine and copy the certificate, and shall furnish him with such assistance and means as he may require for the purpose of his entry on, and departure from, the boat and his examination thereof.

If any structural alterations are carried out to a canal boat, the certificate of registration ceases to be in force^(m), and in such circumstances, the owner should make application to the appropriate authority for the issue of a new certificate.

If a registration authority are satisfied that a canal boat does not conform to the conditions of registration prescribed by the regulations, they may refuse to register the boat, but the owner has the right of appeal to a court of summary jurisdiction⁽ⁿ⁾.

(l) Public Health Act, 1936, sect. 255(4) ; 29 Halsbury's Statutes 485.

(m) *Ibid*, sect. 252(4) ; 29 Halsbury's Statutes 484.

(n) *Ibid*, sect. 252 (5) ; 29 Halsbury's Statutes 484.

Registration authorities must keep a register of canal boats registered by them, which must be in the following form :—

CANAL BOATS REGULATIONS, 1878—SCHEDULE.

FORM B.

Register of Canal Boats.

- 1—Registration number of the boat.
- 2—Name of the boat, or, if there be no name, the number.
- 3—Christian name, surname, and address of owner(o).
- 4—Christian name and surname of master.
- 5—Route along which the boat is accustomed or intended to ply.
- 6—Nature of the traffic in which the boat is accustomed or intended to be employed.
- 7—Mode of propulsion ;
and whether a “ wide ” or “ narrow ” boat ;
and whether to be used as a “ fly ” boat worked by shifts.
- 8—Number of cabins in the boat.
- 9—Dimensions and cubical capacity of the cabin or cabins :—

Rule of measurement and of deduction adopted(p) :—
ft. in.

After cabin	{	Height
		Length
		Width
		Gross cubical capacity
		Net cubical capacity or free air space
Fore cabin	{	Height
		Length
		Width
		Gross cubical capacity
		Net cubical capacity or free air space

- 10—Date of application for registration.
- 11—Date of examination by officer of authority.
- 12—Date of registration.
- 13—Place to which boat is registered as belonging, for the purposes of the Elementary Education Acts
- 14—Maximum number of persons for which the boat is registered, subject to the conditions prescribed with regard to the separation of the sexes.

As a “ fly ” boat worked by shifts	..... persons
Otherwise than as a “ fly ” boat—	
in after cabin	..... persons
in fore cabin	..... persons

- 15—Observations.
- 16—Initials of clerk or chairman of sanitary authority acting as the registration authority.

LETTERING, MARKING AND NUMBERING OF CANAL BOATS.

Regulation No. 7 of the Regulation of 1878, *post*, p. 381, deals with the lettering, marking and numbering of canal boats which have been registered.

(o) See note 1 to Form A, *ante*, p. 377.(p) See note 2. *ibid*.

Canal Boats Regulations, 1878.

7—Every owner of a canal boat registered as a dwelling shall forthwith, upon the receipt of the certificates of registration from the registration authority, cause such boat to be lettered, marked and numbered in accordance with the following rules; that is to say—

- (a) The word "registered," the name of the place to which the boat has been registered as belonging, the registered number of the boat, and such distinctive mark or marks as may be required by the registration authority, and may be specified in the certificate of registration, shall be painted white on a black ground in a conspicuous position on the outside of one of the cabins of the boat.
- (b) The name of the place to which the boat has been registered as belonging, and the registered number of the boat, shall be painted in Roman capital letters and figures, not less than two inches in height.

It should be noted that section 3 of the Canal Boats Act, 1877(*q*), provided, *inter alia*, that every canal boat must be lettered, marked and numbered in some conspicuous manner, and that the word "registered" must be used, together with the name of the place to which the boat was registered as belonging and the registration number. If the boat was not marked as required by section 3, *supra*, it was deemed to be an unregistered canal boat. Under section 7 of the Canal Boats Act, 1884(*r*), the lettering, etc., had to be on both sides of the boat, or in some suitable position on the stern of the boat, so that the lettering, etc., could be plainly visible from both sides of the canal. Sections 3 and 7, *supra*, have been repealed by the Act of 1936 and not re-enacted, but the matters dealt with will probably be included in the new Regulations to be issued under section 251 of the Act (see *ante*, p. 374).

NUMBER OF PERSONS WHO MAY OCCUPY A CANAL BOAT.

Part III of the Canal Boats Regulations, 1878, *infra*, prescribes the number of persons who may occupy a canal boat, and it will be seen that the amount of cubic air space must be as follows:—

Persons over 12 years	60 cubic feet.
Persons under 12 years	40 cubic feet.

It must be remembered that Regulation No. 3 (see *ante*, p. 375), requires every after cabin to contain not less than 180 cubic feet of free air space, and every fore cabin not less than 80 cubic feet.

Canal Boats Regulations, 1878—Part III.

8—For the purpose of fixing the number, age, and sexes of the persons who may be allowed to dwell in a canal boat, which conforms to the conditions of registration provided by these regulations, and which shall, in pursuance of the statutory provision in that behalf, have been registered as a dwelling, the following rules shall apply :—

- (a) Subject to the conditions hereinafter prescribed with respect to the separation of the sexes, the number of persons who may be allowed to dwell in the boat shall be such that in the cabin or cabins of the boat there shall be not less than 60 cubic feet of free air space for each person above the age of 12 years, and not less than 40 cubic feet of free air space for each child under the age of 12 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, the free air space for each child under the age of 12 years shall be deemed sufficient if it is not less than 30 cubic feet.

Provided also, that in the case of a boat registered as a " fly " boat, and worked by shifts, by four persons above the age of 12 years, there shall be not less than 180 cubic feet of free air space in any cabin occupied as a sleeping place by any two of such persons at one and the same time.

- (b) A cabin occupied as a sleeping place by a husband and wife shall not at any time while in such occupation be occupied as a sleeping place by any other person of the female sex above the age of 12 years, or by any other person of the male sex above the age of 14 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand, eight hundred and seventy-eight, a cabin occupied as a sleeping place by husband and wife may be occupied by one other person of the male sex above the age of 14 years, subject to the following conditions :—

- (i) That the cabin be not occupied as a sleeping place by any other person than those above mentioned ;
- (ii) That the part of the cabin which may be used as a sleeping place by the husband and wife shall, at all times while in actual use, be effectually separated from the part used as a sleeping place by the other occupant of the cabin, by means of a sliding or otherwise moveable screen or partition of wood or other solid material, so constructed or placed as to provide for efficient ventilation ;
- (c) A cabin occupied as a sleeping place by a person of the male sex above the age of 14 years shall not, at any time, be occupied as a sleeping place by a person of the female sex above the age of 12 years, unless she be the wife of the male occupant, or of one of the male occupants in

CLEANLINESS OF CANAL BOATS.

Regulations 9, 10 and 11, *infra*, deal with the painting of canal boats, removal of bilge water, and general cleanliness.

Canal Boats Regulations 1878.

- 9—The owner of a canal boat which may have been registered as a dwelling shall, once at least in every three years, cause the paint on every surface in the interior of every cabin which may be used as a dwelling to be thoroughly renewed.
- 10—The master of a canal boat which may have been registered as a dwelling shall cause all bilge water to be removed therefrom by pumping as often as may be necessary to prevent any collection of such water beneath the floor of any cabin which may be used as a dwelling, and, in any case, not less frequently than once in every twenty-four hours.
- 11—The master of a canal boat which may have been registered as a dwelling shall cause every cabin which may be used as a dwelling to be kept at all times in a cleanly and habitable condition.

PREVENTION OF SPREAD OF INFECTIOUS DISEASE.

Local authorities are empowered by section 254 of the Act of 1936, *infra*, to take such steps as may be necessary to prevent the spread of infectious disease from a canal boat.

Section 254, Public Health Act, 1936.—Infectious disease on canal boats.

A local authority or port health authority, on being informed that any person on a canal boat within their district is suffering from an infectious disease, shall cause such steps to be taken for preventing the spread of the disease as they consider to be necessary and for that purpose may exercise any of the powers in relation to the prevention of infection conferred upon them by this Act or, as the case may be, by the Public Health (London) Act, 1891, including powers for procuring the removal to hospital of persons suffering from infectious disease, and may also, if need be, detain the boat, but not for any longer period than is necessary for cleansing and disinfecting it.

Further provisions relating to the notification of infectious disease, are contained in Regulations 12 and 13, *infra*.

Canal Boats Regulations, 1878—Part V.

- 12—In every case where a person on a canal boat is seriously ill or is evidently suffering from an infectious disease, the master of the boat, if, at the time, the boat is proceeding on a journey, shall, as soon as may be practicable, give information thereof to the sanitary authority within whose district is situate the canal or the part of the canal along which the boat may at the time be passing, and, of the arrival of the boat at its port or place of destination, to the sanitary authority within whose district such port or place is situate, and also to the owner of the boat.

If at the time the boat be at its port or place of destination, the master shall forthwith inform the sanitary authority within whose district such port or place is situate, and also the owner of the boat, that a person on board the boat is seriously ill or is evidently suffering from an infectious disease.

The owner of the boat shall forthwith, upon receipt from the master of information to the effect that a person on board the boat is or has been suffering from an infectious disease, give notice to that effect to the sanitary authority having jurisdiction in the place to which the boat may have been registered or belonging.

- 13—In every case where, in the exercise of the power conferred by section 4 of the Canal Boats Act, 1877(s), a sanitary authority may have detained a canal boat for the cleansing or disinfection thereof, the authority, before allowing the boat to proceed on its journey, shall obtain from their medical officer of health, or from some other legally qualified practitioner, a certificate to the effect that the boat has been duly cleansed and disinfected, and shall cause such certificate to be delivered to the master of the boat. The sanitary authority may pay a reasonable remuneration for any such certificate.

See also chapters 19 and 20 (*post*, p. 417 *et seq.*), for the powers and duties of local authorities regarding infectious diseases and disinfection, which, by virtue of section 267 of the Act of 1936, apply to canal boats.

VERMINOUS CANAL BOATS.

Section 267 of the Act of 1936, extends the provisions of Part II of that Act, relating to verminous premises, articles and persons, to vessels lying in any inland or coastal waters, so that any verminous conditions found on a canal boat may be dealt with under Part II, *supra*, as if the canal boat were a house, building or premises within the district of the local authority, and the master of the boat were the occupier (see *post*, p. 484).

ADMINISTRATIVE PROVISIONS.

(a) **Contravention of powers relating to canal boats.**—If a canal boat is used as a dwelling without being properly registered, or if any regulation with respect to such a boat is not complied with, the master of the boat, and the owner thereof, if he is himself in default, are liable to a fine not exceeding five pounds, and to a daily penalty not exceeding forty shillings(t).

In case of an offence occurring, legal proceedings may be taken before a court of summary jurisdiction, either in the

(s) See now sect. 254, Public Health Act, 1936, *ante*, p. 383.

place where the offence was committed, or the place where the alleged offender is for the time being, or in the place where the boat concerned is registered^(u).

(b) **Powers of entry and inspection of canal boats.**—Subsections (1) and (2) of section 255 of the Act of 1936, *infra*, empower an inspector of the Ministry of Health or of a local authority, to enter a canal boat between the hours of 6 a.m. and 9 a.m. in order to ascertain whether any of the provisions relating to canal boats are being contravened.

Section 255, Public Health Act, 1936.—Power to enter and inspect canal boat.

- (1) An inspector appointed by the Minister may, on producing, if required, evidence of his authority, enter a canal boat at any time between six o'clock in the morning and nine o'clock in the evening and examine every part of the boat and may, if need be, detain the boat for the purpose of his examination, but not for any longer period than is necessary.
- (2) If an authorised officer of a local authority or port health authority has reasonable ground for believing—
 - (a) that any provision of this Part of this Act, or any regulation made thereunder, is being contravened as respects a canal boat; or
 - (b) that there is on board a canal boat any person suffering from an infectious disease,
 he shall, for the purpose of ascertaining whether there is any such contravention as aforesaid or any person on board suffering from an infectious disease, have the like rights of entering, examining and if necessary detaining the boat as an inspector of the Minister has under the last preceding subsection.

The following information should be included in the register of inspections of canal boats, and the details of any action taken, together with the result thereof, should also be shown.

Date of inspection ;
 Name or number of boat ;
 Place of registration ;
 Registered number ;
 Name and address of owner ;
 Name of master ;
 Was registration certificate produced ;
 Did registration certificate identify owner and boat
 No. of adults registered for—
 aft cabin
 fore cabin ;
 Number and sexes occupied by, with ages of children—
 males
 females
 children ages
 Was boat properly marked ;
 Date when cabin last painted ;
 Present condition as to cleanliness ;

(u) *Ibid*, sect. 256 ; 29 Halsbury's Statutes 486.

Details of any repairs requiring attention ;
 Ventilation ;
 Was water tank or receptacle of sufficient size ;
 Was bilge water removed daily ;
 Details of any offensive cargo carried ;
 If so, details of double bulkhead ;
 Details of any illness or infectious disease on board boat ;
 Reference to notice served (if any) ;
 Date notice complied with ;
 Details of legal proceedings (if any) ;
 Remarks.

Where contraventions of the Act of 1936 or of any Regulations made thereunder are discovered, notice should be served upon the master or owner, together with a certificate to be signed by an inspecting officer when the matter referred to in the notice has been remedied. This enables the owner or master to have the boat inspected and declared satisfactory by the inspector of the authority in whose area the boat happens to be stationed when the contravention is dealt with. At the same time, it also enables the inspector issuing the notice to be satisfied as to its compliance without waiting for the return of the boat to his district, which may be delayed for some considerable time.

(c) Annual Report upon administration of provisions relating to canal boats.—Every registration authority is required to submit to the Minister of Health, within twenty-one days after the end of each calendar year, a report as to the steps taken by them during that year to carry into effect the provisions of Part X of the Act of 1936 and any regulations made thereunder, relating to canal boats^(a). It should be noted that the duty of submitting an annual report is placed upon registration authorities only, and not upon all sanitary authorities, as was the case under the repealed section 3 of the Canal Boats Act, 1884^(b).

The annual report should contain information relating to the following matters :—

- (1) Number of boats inspected.
- (2) Number of occupants of the boats, distinguishing between males and females, and adults and children.
- (3) The number of infringements of the Public Health Act and the Canal Boats Regulations, with full details of each case.
- (4) Legal proceedings taken in respect of any of the above infringements, with details of the results thereof.

^(a) *Ibid*, sect. 249(3) ; 29 Halsbury's Statutes 483.

^(b) 13 Halsbury's Statutes 803.

- (5) Other steps taken to deal with any of the infringements, including the service of notices, the number complied with and the number outstanding at the close of the year.
- (6) Cases of infectious diseases occurring in canal boats.
- (7) The number of boats newly registered during the year and the total number of boats remaining on the register.

CARRIAGE OF PETROLEUM ON CANAL BOATS.

Section 9 of the Petroleum (Consolidation) Act, 1928(c), empowers canal companies to make byelaws governing the loading, conveyance and landing of petroleum spirit in and upon the canal. The byelaws are subject to the approval of the Minister of Transport. Article 3 of the Canal Boats Regulations, 1878, requiring the provision of a stove in at least one cabin, does not now apply in the case of canal boats used for the carriage of petroleum(d).

MOTOR DRIVEN CANAL BOATS.

The question of motor driven canal boats has recently received attention and in October, 1935, a Memorandum was issued by the Ministry of Health, containing suggestions with regard to the construction of new boats. These suggestions were modified slightly in January, 1936, and are still under consideration.

In the Annual Report of the Ministry of Health for the year 1934-35(e), it was stated that the use of motor-driven canal boats is on the increase, and that these boats are notable for improvement in design in ventilation and lighting, and also for the provision of sanitary conveniences, taking the form of chemical closets situated in the engine room. The matter was further referred to in the Annual Report of the Ministry for the year 1935-36(f), when it was recorded that the Department had communicated to the main organisations representative of the industry certain recommendations relating particularly to narrow motor boats and butty-boats. These recommendations related to steps to be taken to lessen the risk of carbon-monoxide poisoning, lighting, protection against fire, latrine accommodation, and the replacement of the fore cabin by a compartment for stores.

(c) 13 Halsbury's Statutes 1175.

(d) Canal Boats (Amendment) Regulations, 1931; S.R. and O., 1931, No. 444.

(e) Cmd. 4978, p. 43. H.M.S.O.

(f) Cmd. 5287, p. 21. H.M.S.O.

As pointed out previously (see page 374, *ante*) it is the duty of the Minister of Health to make Regulations under section 251 of the Act of 1936 relating to canal boats, and when new regulations are issued to replace those of 1878, it is probable that they will include clauses dealing with motor-driven canal boats.

EDUCATIONAL PROVISIONS.

In order that children living on canal boats may receive proper education, the Education Act, 1921(*g*), provides that parents and children are deemed to be resident within the area of the authority with whom the canal boat is registered. Consequently children of school age are subject to any byelaws of the education authority of the registration area applicable to school attendance. Provided, however, that if a parent satisfies the education authority concerned that his child is being efficiently instructed in some other district, the authority must grant him a certificate to that effect, and thereupon both he and the child are deemed to be resident in such other district. Such a certificate may be rescinded or varied either on the application of the parent or by the local education authority of the place where the boat is registered, if they are satisfied that the child is not receiving efficient elementary instruction or properly attending school(*h*).

Any company or association owning canal boats or being the owners or lessees of a canal, may maintain elementary schools for children living on canal boats(*i*).

(*g*) Sect. 50(1) ; 7 Halsbury's Statutes 158.

(*h*) *Ibid.*, sect. 50(2).

(*i*) Sect. 12, Canal Boats Act, 1877 ; 13 Halsbury's Statutes 803.

CHAPTER 17.

TEMPORARY BUILDINGS ;

TENTS, VANS, SHEDS AND SIMILAR STRUCTURES.

The proper control of temporary buildings, including tents, vans, sheds and similar structures, is a matter of considerable importance to local authorities, and it has occasioned a good deal of difficulty in the past. Erections of this kind may be divided into two groups :—

- (a) Temporary buildings ; and
- (b) Tents, vans, sheds and similar structures.

In certain circumstances, erections which might come within the scope of the law relating to tents, vans, and sheds, may also be " buildings " subject to the building byelaws(a), or they may be " temporary buildings " within the meaning of section 53 of the Act of 1936 (see *post*, p. 390). A caravan on wheels was held not to be a temporary building(b), under the repealed section 27 of the Public Health Acts Amendment Act, 1907(c). In a second case(d), however, a railway carriage still on wheels, and converted into a dwelling by the erection of partitions, was held to be a temporary building. Where two vans were occupied as a dwelling-house for two years, then being removed whilst a low wall was built, and afterwards returned so as to be partly on the wall and partly on blocks of wood, a chimney stack also being built into the side of one of the huts, it was held that the erection was a new building subject to the building byelaws(e). In all these three cases the Court held that the question was one of fact, and refused to interfere with the decision of the justices. In another case(f), an old railway carriage was converted into a dwelling-house by altering the interior arrangement. It was held that the alteration constituted a new building subject to the building byelaws and that the local authority were entitled to pull down the whole structure and not only the work done in converting the railway carriage into a dwelling.

(a) *Andrews v. Wirral R.D.C.*, [1916] 1 K.B. 863 ; 38 Digest 183, 233.

(b) *Rodwell v. Wade* (1925), 23 L.G.R. 174 ; 38 Digest 187, 260.

(c) 13 Halsbury's Statutes 919.

(d) *Keeling v. Wirral U.D.C.* (1925), 23 L.G.R. 201 ; 38 Digest 188, 261.

(e) *James v. Tudor* (1913), 77 J.P. 130 ; 38 Digest 180, 214.

TEMPORARY BUILDINGS.

Sections 53 of the Act of 1936, contains special provisions relating to temporary buildings, constructed of certain classes of material and in this chapter, the expression "temporary building" refers to such erections. Subsection (7) empowers a local authority to include in their building byelaws a clause stating that section 53(g) shall apply to any materials specified in the byelaws as being materials which are, in the absence of special care, liable to rapid deterioration, or are otherwise unsuitable for use in the construction of permanent buildings. Byelaws with respect to the structure of buildings may be made under section 61 of the Act of 1936 (see *ante*, p. 9). Byelaw No 79 in the Model Series issued by the Ministry of Health(h), prescribes that the provisions of section 53 shall apply to the following materials :

- (1) so far as they are used wholly or principally for the construction of the weather-resisting part of a roof or external wall of a building :
 - (a) match boarding ;
 - (b) sheets of compressed fibre or wood pulp ;
 - (c) ply-wood ;
 - (d) plaster board ;
 - (e) fibrous plaster ;
 - (f) lime or gypsum plaster on wood or metal lath ;
 - (g) cement plaster not exceeding $1\frac{1}{2}$ inches in thickness on wood or metal lath ;
 - (h) sheet iron or steel (whether galvanised or not) which is not painted or otherwise protected by a bituminous or other not less suitable coating ;
 - (i) felt ;
 - (j) canvas or cloth ;
- (2) so far as it is used wholly or principally for the construction of the weather-resisting part of a roof of a building ;
unprotected softwood boarding.

Where plans are submitted showing that a proposed building is to be constructed of materials to which section 53, *supra*, applies, a local authority are empowered by subsection (1), *infra*, either to reject the plans completely, or fix a period on the expiration of which the building must be removed. They may also impose conditions with respect to the use of the temporary building.

Section 53(1), Public Health Act, 1936.—Special provisions as to buildings constructed of materials which are short-lived, or otherwise unsuitable for use in permanent buildings.

- (1) Where plans of a building are, in accordance with building byelaws, deposited with a local authority, and the plans show that

it is proposed to construct a building of materials to which this section applies, or to place or assemble on the site a building constructed of such materials, the authority may, notwithstanding that the plans conform with the byelaws—

- (i) reject the plans; or
- (ii) in passing the plans fix a period on the expiration of which the building must be removed and impose with respect to the use of the building such reasonable conditions, if any, as having regard to the nature of the materials used in its construction they deem appropriate, so, however, that no condition shall be imposed which conflicts with any provision applicable to the building under a planning scheme.

.....

The expression "building" is not defined in the Act of 1936 but the provisions of section 53, *supra*, apply in relation to any extension of an existing building as they apply in relation to a new building⁽ⁱ⁾. With regard to a building partly pulled down, it was held under the corresponding provision in the Public Health Acts Amendment Act, 1907^(k), that only such portion of the building as was pulled down to be re-erected was to be deemed a new building^(l). Sub-section (2) of section 90 of the Act of 1936, *infra*, details the operations which are deemed to be the erection of a building.

Section 90(2), Public Health Act, 1936.—Interpretation of Part II.

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- (2) For the purposes of this Part of this Act, and, so far as byelaws made thereunder may provide, for the purposes of those byelaws, any of the following operations shall be deemed to be the erection of a building, that is to say—
- (i) the re-erection of any building or part of a building when an outer wall of that building or, as the case may be, that part of a building has been pulled down, or burnt down, to within ten feet of the surface of the ground adjoining the lowest storey of the building or of that part of the building;
 - (ii) the re-erection of any frame building or part of a frame building when that building or part of a building has been so far pulled down, or burnt down, as to leave only the framework of the lowest storey of the building or of that part of the building;
 - (iii) the roofing over of any open space between walls or buildings;

and the word "erect" shall be construed accordingly.

It should be noted that, as compared to the repealed section 27 of the Act of 1907, *ante*, p. 389, the definitions do not govern byelaws except in so far as the byelaws themselves may provide.

(i) Sect. 53 (8), Public Health Act, 1936; 29 Halsbury's Statutes 365.

(k) Sect. 23; 13 Halsbury's Statutes 919.

(l) *R. v. Foote Cray U.D.C.* (1915). 85 L.J.K.B. 191; 38 Digest 181, 221.

Where a temporary building is erected without the submission of plans, the local authority may allow it to remain for a limited period, in accordance with section 53(2), *infra*, without prejudice to their right to take action in respect of any contravention of the byelaws, *e.g.* failure to give notice of intention to erect the building and to submit the necessary plans.

Section 53(2), Public Health Act, 1936.—Special provisions as to buildings constructed of materials which are short-lived or otherwise unsuitable for use in permanent buildings.

-
- (2) If a building in respect of which plans ought under the building byelaws to have been deposited, but have not been deposited, appears to the authority to be constructed of such materials as aforesaid, the authority, without prejudice to their right to take proceedings in respect of any contravention of the byelaws, may fix a period on the expiration of which the building must be removed and, if they think fit, impose such conditions with respect to the use of the building as might have been imposed under the last preceding subsection upon the passing of plans for the building and, where they fix such a period, shall forthwith give notice thereof, and of any conditions imposed, to the owner of the building.

Where a local authority have authorised a temporary building to remain for a specified period, they may from time to time extend such period, or vary any conditions imposed, but such conditions may only be varied upon the application of the owner of the building or when the authority are granting an extension of time for the retention of the building^(m).

Where a person is aggrieved by the action of a local authority in respect of a temporary building, he may appeal to a court of summary jurisdiction⁽ⁿ⁾.

When the period fixed by the local authority, together with any extension thereof, has expired, the owner of a temporary building must demolish it, in accordance with section 53(5) of the Act of 1936, *infra*.

Section 53(5), Public Health Act, 1936.

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- (5) The owner of any building in respect of which a period has been fixed under this section shall, on the expiration of that period or, as the case may be, of that period as extended, remove the building, and, if he fails to do so, the local authority shall remove it and may recover from him the expenses reasonably incurred by them in so doing, and, without prejudice to the right of the authority to exercise that power, he shall be liable to a fine not exceeding ten pounds and to a further fine not exceeding

five pounds for each day during which the building is allowed to remain after the conviction.

.....

It will be observed that if the owner fails to do so, the local authority *must* demolish the temporary building, and they may recover from the owner the expenses incurred in so doing.

Where a local authority impose any condition with respect to a temporary building and any person uses such building in contravention of such condition, he is liable to a penalty(o).

Existing temporary buildings.—Section 344 of the Act of 1936, *infra*, empowers a local authority to extend a license in respect of a temporary building which was granted under section 27 of the Public Health Acts Amendment Act, 1907(p), or under section 25 of the Housing, Town Planning, etc., Act, 1919(q), which was in force at the 1st of October, 1937, for such period as they think fit. If the authority refuse to grant an extension of a temporary building license, any person aggrieved may appeal to a court of summary jurisdiction.

Section 344, Public Health Act, 1936.—Transitional provisions as to existing temporary buildings.

- (1) Where at the commencement of this Act there is in existence a building to the erection of which a local authority have given their consent either under section twenty-seven of the Public Health Acts Amendment Act, 1907, or under section twenty-five of the Housing, Town Planning, etc., Act, 1919, the local authority may under this section extend the period fixed by them, either originally or by way of extension, as the period during which the building may be allowed to stand or, as the case may be, may be allowed to be used for human habitation, and any person aggrieved by their refusal to extend any such period may appeal to a court of summary jurisdiction.
- (2) The owner of any such building shall, on the expiration of the period fixed, or, as the case may be, of that period as extended, remove the building if it was erected under the said Act of 1907 or discontinue its use for human habitation if it was erected under the said Act of 1919, and, if he fails to do so, the local authority shall remove the building and may recover from him the expenses reasonably incurred by them in so doing, and without prejudice to the right of the authority to exercise that power he shall be liable to a fine not exceeding ten pounds and to a further fine not exceeding five pounds for each day during which the building is allowed to remain, or, as the case may be, is allowed to be used for human habitation after the conviction.

(o) Public Health Act, 1936, sect. 53(6) ; 29 Halsbury's Statutes 365.

(p) 13 Halsbury's Statutes 920.

(q) 13 Halsbury's Statutes 959.

The repeal of section 27 of the Act of 1907, *ante*, p. 389, did not take effect until the date on which building byelaws made by the local authority under the provisions of the Act of 1936 came into force in the district, or until the 1st of October, 1938, whichever date occurred first(*r*).

Town Planning Provisions.—Under the Town and Country Planning Act, 1932(*s*), local authorities are required to prepare a planning scheme for their areas. Such a scheme provides, *inter alia*, for the restriction of building and the use of land. For this purpose, the local authority may divide their area into “zones,” and a “use zone” means a zone where the use of buildings is restricted. In a use zone certain buildings may be erected without the consent of the local authority ; others may be erected and used only with the consent of the authority ; and others may not be erected and used. Subject to the usual right of appeal, the local authority may prohibit the erection or use of a building in a use zone for the purpose of preventing danger or injury to health or serious detriment to the neighbourhood. Upon the adoption of the town planning scheme, therefore, a local authority are entitled to prohibit the erection or use of a temporary building or structure in a particular zone, either on account of danger or injury to health, or on account of its detrimental effect upon the amenities of the neighbourhood.

TENTS, VANS, SHEDS AND SIMILAR STRUCTURES.

The control of tents, vans, sheds and similar structures used for human habitation entails a considerable amount of work for local authorities and their officers. Within recent years, certain areas have been much troubled with extensive colonies of these erections, many having developed from purely week-end holiday huts, to permanent habitations. Originally, local authorities were empowered by section 9 of the Housing of the Working Classes Act, 1885(*t*), to deal with certain nuisances in connection with tents, vans and sheds, and to make byelaws for their control. Subsequently, sections 43 and 50 of the Public Health Act, 1925(*u*), could be adopted by local authorities to enable further control to be exercised. In some areas, additional powers were obtained in local Acts.

The above powers have now been repealed (except those

in local Acts, under certain circumstances(*x*)), and sections 268 and 269 of the Act of 1936(*y*), contain the powers relating to tents, vans, sheds and similar structures.

Nuisances in connection with tents, vans and sheds.—Part III of the Act of 1936, relating to nuisances, applies to any tent, van, shed or similar structure used for human habitation—

- (a) which is in such a state, or so overcrowded, as to be prejudicial to the health of the inmates ; or
- (b) the use of which, by reason of the absence of proper sanitary conveniences or otherwise, gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health.

Such conditions are “statutory nuisances” within the meaning of section 92 of the Act of 1936(*z*), and in dealing with such nuisances, the expression “occupier” in relation to a tent, van, shed or similar structure includes any person for the time being in charge thereof(*a*). Full details regarding the abatement of statutory nuisances will be found in chapter 9 (see *ante*, p. 219).

Where a nuisance under paragraph (b), *supra*, is alleged to arise, wholly or in part, from the use for human habitation, of any tent, van, shed or similar structure, the local authority may serve an abatement notice (see *ante*, p. 231) on the occupier of the land on which the tent, etc., is erected or stationed and take proceedings under Part III of the Act of 1936, in addition to serving notice and taking proceedings against the occupier of the tent, etc. Where the occupier of the land is proceeded against, it is a good defence to prove that he did not authorise the tent, etc., to be stationed or erected upon his land(*b*).

Where proceedings are taken before a court in respect of a statutory nuisance arising in connection with a tent, van, shed, or similar structure, the court may, in addition to any other powers, make an order prohibiting the use for human habitation of the tent, etc., in question at such places, or within such areas as may be specified in the order(*c*).

Other provisions of the Act of 1936 applicable to tents, etc.—The following provisions of the Act of 1936 apply to tents, vans, sheds and similar structures used for human

(*x*) Sect. 269(9), Public Health Act, 1936, *post*, p. 399.

(*y*) 29 Halsbury's Statutes 492.

(*z*) 29 Halsbury's Statutes 394.

(*a*) *Ibid.*, sect. 268(2) ; 29 Halsbury's Statutes 493.

(*b*) *Ibid.*, sect. 268(3) ; 29 Halsbury's Statutes 493.

(*c*) *Ibid.*, sect. 269(1) ; 29 Halsbury's Statutes 493.

habitation as they apply to other premises, and as if a tent, etc., so used, were a house or a building so used(*d*).

- (i)—Part V—Prevention, notification and treatment of disease (see chapters 19 and 20, *post*, p. 417 *et seq.*);
- (ii)—Part VII—Notification of births; maternity and child welfare, and child life protection;
- (iii)—Part XII—General provisions; and
- (iv)—Part II—Sections 83 to 86 inclusive, relating to filthy or verminous premises or articles, and verminous persons (see chapter 20, *post*, p. 484).

Byelaws relating to tents, vans, sheds and similar structures.—Subsection (4) of section 268 of the Act of 1936(*e*), empowers a local authority to make byelaws for promoting cleanliness in, and the habitable condition of, tents, vans, sheds and similar structures used for human habitation, for preventing the spread of infectious disease, and generally for the prevention of nuisances in connection with such erections. The Ministry of Health have issued a series of Model Byelaws.

Where proceedings are taken before a court in respect of a contravention of the byelaws relating to tents, etc., the court have power, in addition to any other remedy, to make an order prohibiting the use for human habitation of the tent, etc., in question at such places, or within such area, as may be specified in the order(*f*).

In order to succeed in obtaining an order prohibiting the use of a particular site by tents, etc., stress should be laid upon the condition of the ground itself, as it is frequently in a very foul state. Owing to the absence of proper means for the disposal of slop water, and in some cases, owing to the absence of proper sanitary conveniences, the ground becomes extremely foul, and it is usually quite impossible to deal with it satisfactorily, otherwise than by prohibiting the land being used as a site for caravans. It is important therefore that this point should always be emphasized.

Control of moveable dwellings.—Reference has already been made to the powers relating to moveable dwellings, contained in private local Acts (see *ante*, p. 395). Section 269 of the Act of 1936, *infra*, contains provisions on the lines of the sections in local Acts but it will be observed that where a local Act is in force, the authority concerned may decide whether to retain their local powers or to have them repealed and utilise section 269.

(*d*) *Ibid.*, sect. 268(1); 29 Halsbury's Statutes 492.

(*e*) 29 Halsbury's Statutes 493.

Section 269, Public Health Act, 1936.—Power of local authority to control use of moveable dwellings.

- (1) For the purpose of regulating in accordance with the provisions of this section the use of moveable dwellings within their district, a local authority may grant :—

(i) licences authorising persons to allow land occupied by them within the district to be used as sites for moveable dwellings ; and

(ii) licences authorising persons to erect or station, and use, such dwellings within the district ;

and may attach to any such licence such conditions as they think fit—

(a) in the case of a licence authorising the use of land, with respect to the number and classes of moveable dwellings which may be kept thereon at the same time, and the space to be kept free between any two such dwellings, with respect to water supply, and for securing sanitary conditions ;

(b) in the case of a licence authorising the use of a moveable dwelling, with respect to the use of that dwelling (including the space to be kept free between it and any other such dwelling) and its removal at the end of a specified period and for securing sanitary conditions.

- (2) Subject to the provisions of this section, a person shall not allow any land occupied by him to be used for camping purposes on more than forty-two consecutive days or more than sixty days in any twelve consecutive months, unless either he holds in respect of the land so used such a licence from the local authority of the district as is mentioned in paragraph (i) of the preceding subsection, or each person using the land as a site for a moveable dwelling holds in respect of that dwelling such a licence from that authority as is mentioned in paragraph (ii) of the said subsection.

For the purposes of this subsection, land which is in the occupation of the same person as, and within one hundred yards of, a site on which there is during any part of any day a moveable dwelling shall be regarded as being used for camping purposes on that day.

- (3) Subject to the provisions of this section, a person shall not keep a moveable dwelling on any one site, or on two or more sites in succession, if any one of those sites is within one hundred yards of another of them, on more than forty-two consecutive days, or sixty days in any twelve consecutive months, unless either he holds in respect of that dwelling such a licence from the local authority of the district as is mentioned in paragraph (ii) of subsection (1) of this section, or the occupier of each piece of land on which the dwelling is kept holds in respect of that land such a licence from that authority as is mentioned in paragraph (i) of the said subsection.

- (4) Where under this section an application for a licence is made to a local authority, the authority shall be deemed to have granted it unconditionally, unless within four weeks from the receipt thereof they give notice to the applicant stating that his application is refused, or stating the conditions subject to

which a licence is granted, and, if an applicant is aggrieved by the refusal of the authority to grant him a licence, or by any condition attached to a licence granted, he may appeal to a court of summary jurisdiction.

(5) Nothing in this section applies—

(i) to a moveable dwelling which—

(a) is kept by its owner on land occupied by him in connection with his dwelling-house and is used for habitation only by him or by members of his household; or

(b) is kept by its owner on agricultural land occupied by him and is used for habitation only at certain seasons and only by persons employed in farming operations on that land; or

(ii) to a moveable dwelling which belongs to a person who is the proprietor of a travelling circus, roundabout, amusement fair, stall or store (not being a pedlar, hawker, or costermonger) and which is regularly used by him in the course of travelling for the purpose of his business; or

(iii) to a moveable dwelling while it is not in use for human habitation and is being kept on premises the occupier of which permits no moveable dwellings to be kept thereon except such as are for the time being not in use for human habitation.

(6) If an organisation satisfies the Minister that it takes reasonable steps for securing—

(a) that camping sites belonging to or provided by it, or used by its members, are properly managed and kept in good sanitary condition; and

(b) that moveable dwellings used by its members are so used as not to give rise to any nuisance,

the Minister may grant to that organisation a certificate of exemption.

A certificate so granted may be withdrawn at any time, but while in force shall for the purposes of this section have the effect of a licence—

(i) authorising the use as a site for moveable dwellings of any camping ground belonging to, provided by or used by members of, the organisation;

(ii) authorising any member of the organisation to erect or station on any site, and use, a moveable dwelling.

In this subsection the expression "member" in relation to an organisation includes a member of any branch or unit of, or formed by, the organisation.

(7) A person who contravenes any of the provisions of this section, or fails to comply with any condition attached to a licence granted to him under this section, shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

(8) For the purposes of this section—

(i) the expression "moveable dwelling" includes any tent, any van or other conveyance whether on wheels or not,

and, subject as hereinafter provided, any shed or similar structure, being a tent, conveyance or structure which is used either regularly, or at certain seasons only, or intermittently, for human habitation :

Provided that it does not include a structure to which the building byelaws of the local authority apply ;

- (ii) the owner of land which is not let shall be deemed to be the occupier thereof ;
 - (iii) if a moveable dwelling is removed from the site on which it stands, but within forty-eight hours is brought back to the same site or to another site within one hundred yards thereof, then, for the purpose of reckoning any such period of forty-two consecutive days as is mentioned in subsection (2) or subsection (3) of this section, it shall be deemed not to have been removed or, as the case may be, to have been moved direct from one site to the other.
- (9) Subject as hereinafter provided, this section shall not apply to any district in which at the commencement of this Act there was in force a local Act containing provisions enabling the local authority to regulate, by means of byelaws or licences or otherwise, the use of moveable dwellings or camping grounds :
- Provided that, on the application of the local authority, the Minister may declare this section to be in force in their district, and upon the declaration taking effect, such of the provisions of the local Act as may be specified in the declaration shall be repealed or, as the case may be, shall be repealed as respects the district of that authority.

It will be seen that a local authority may control moveable erections by means of licences, both in respect of sites to be used by caravans, etc., and the erections themselves. The section permits a tent, etc., to remain on a site without a licence, provided the period of stay does not exceed forty-two consecutive days or a total of sixty days in any twelve consecutive months.

The definition of " moveable dwelling " in subsection (8), *supra*, should be noted and it will be observed that it does not apply to any structure subject to the building byelaws, and that if a tent, etc., is removed from a site and returned thereto within forty-eight hours, for the purpose of calculating the number of days it remains on the site, it is deemed not to have been moved at all.

In dealing with temporary or moveable buildings, it is most important that early action should be taken to ascertain whether or not the erection is subject to the building byelaws. If any work subject to the building byelaws is carried out in contravention of such byelaws, the local authority may by notice require the owner to pull it down and if he makes default, the authority themselves may do so and recover the costs incurred from the owner. A local authority are not

entitled to serve a notice requiring the pulling down of a building or the removal of work which is in contravention of the building byelaws, after the expiration of twelve months from the date of completion of the work(g). In other words, if the erection has been in existence for more than twelve months, the authority cannot take action on the ground of failure to comply with the building byelaws. It is important, therefore, that an early decision should be made in every case of a temporary or moveable erection, to see whether it comes within the provisions of the building byelaws or not.

With regard to the exemption in subsection (5) of section 269, *supra*, relating to showmen, etc., it was held(h), under somewhat similar provisions contained in a local Act(i), that whereas the exemption operated in favour of showmen, it did not do so for the owner of the land, who had failed to obtain the consent of the local authority to her land being used for the occupation of the showmen's vans. In this connection, the provisions of subsection (9) must not be overlooked, whereby local Acts remain in force instead of section 269, *supra*, unless repealed by the Minister of Health on the application of the local authority.

DEMOLITION OF TENTS, VANS, SHEDS, ETC.

A local authority are empowered by Part III of the Housing Act, 1936(k), to schedule as a clearance area, blocks of houses which are unfit for human habitation, and, subject to confirmation by the Minister of Health, they may make a clearance order requiring the demolition of all the buildings in such an area.

Subsection (8) of section 26 of the Housing Act, 1936, *infra*, enables a moveable or temporary structure to be included in a clearance area provided it has remained on the same site for a period of not less than two years.

Section 26(8), Housing Act, 1936.—Clearance orders.

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- (8) In the provisions of this Part of this Act relating to buildings included in an area to which a clearance order applies, references to a building shall include references to a hut, tent, caravan or other temporary or moveable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years next before action is taken under those provisions, and the reference to development in subsection (5)

(g) *Ibid*, sect. 65; 29 Halsbury's Statutes 376.

(h) *Drakeley v. Manzoni*, [1938] 1 All E.R. 67; Digest Supp.

(i) *Birmingham Corporation Act, 1935*, sect. 43(3)(b).

(k) 29 Halsbury's Statutes 524

of this section includes a reference to the erection or placing on land of a hut, tent, caravan or other temporary or moveable form of shelter.

Subsection (5) referred to in subsection (8), *supra*, prohibits any land in a clearance area being used for building purposes or otherwise developed, except subject to such restrictions and conditions, if any, as the local authority may think fit to impose. Where an owner is aggrieved, either by the refusal of a local authority to approve of the proposed development of a site or by the conditions imposed by the authority, he may appeal to the Minister of Health, whose decision in the matter is final. Subsection (8), *ante*, p. 400, enables a local authority to sanction or otherwise the use of a cleared site for the erection, or placing upon, of a hut or other temporary or moveable erection.

Sections 9 to 17 of the Housing Act, 1936^(l), enable a local authority to require the repair, demolition or closing of insanitary premises (being individual houses, as compared to areas of insanitary houses, dealt with in section 26 of the Housing Act, 1936, *supra*). The local authority may, by notice, require the owner of a house to carry out such repairs as may, in their opinion, be necessary to render the house in all respects reasonably fit for human habitation, provided that the cost of the necessary work is reasonable. If the premises cannot be rendered fit at a reasonable cost, the authority may make a demolition order, requiring that the house shall be demolished. Section 23 of the Housing Act, 1936^(m), provides that any reference to a house in sections nine to seventeen of that Act, shall include a reference to a hut, tent, caravan or other temporary or moveable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years next before action is taken under those sections.

EMERGENCY PROVISIONS.

The Secretary of State may prohibit camping in any specified area, and thereafter no person may spend the night, or allow any other person to spend the night, on any land in his occupation or under his control, in a tent, hut or similar structure or a caravan or other vehicle, whether on wheels or not. The prohibition does not apply to a camp authorised by a Government Department, or to an officer or servant of a local authority in connection with his work as such, or to the occupier of a

(l) 29 Halsbury's Statutes 572.

(m) 29 Halsbury's Statutes 584.

dwelling-house or any member of his household on land occupied with the dwelling-house, or to persons employed at certain seasons in farming operations on the land subject to the operations, or to persons engaged or employed in the business of a travelling circus or amusement fair. Exemptions may be granted by a chief officer of police⁽ⁿ⁾.

BYELAWS RELATING TO HOP-PICKERS, ETC.

In order that local authorities may control the temporary accommodation provided for persons engaged in hop-picking, etc., section 270 of the Act of 1936^(o), enables byelaws to be made for securing the decent lodging and accommodation of hop-pickers and other persons engaged temporarily in picking, gathering or lifting fruit, flowers, bulbs, roots, or vegetables. The Ministry of Health have issued a Model Series of Byelaws.

⁽ⁿ⁾ Regulation 14B, Defence (General) Regulations, 1939, S.R. and O., 1939, No. 927, as amended; 33 Halsbury's Statutes 580.

^(o) 29 Halsbury's Statutes 496.

CHAPTER 18.

LODGING-HOUSES.

The control of lodging houses is an important duty of sanitary authorities and in many towns takes up a good deal of the time of the sanitary staff. Lodging-houses are divided into two groups—

- (a) Common lodging-houses ; and
- (b) Houses let in lodgings or occupied by members of more than one family.

COMMON LODGING-HOUSES.

Part IX of the Act of 1936—sections 235 to 248(a)—contains the powers of local authorities for controlling common lodging-houses. This Part of the Act is administered by all local authorities, *i.e.* county borough, borough, urban district and rural district, councils.

DEFINITION OF COMMON LODGING-HOUSE.

Although the control of “*public* lodging-houses” was dealt with in the Towns Improvement Clauses Act, 1847(b), and the term defined as a “house in which persons are harboured or lodged for hire for a single night or for less than a week at one time, or any part of which is let for any term less than a week”(c), and provision was made in the Common Lodging Houses Acts, 1851(d) and 1853(e), for the registration of “*common* lodging-houses,” there was no definition in the latter Acts of the term “common lodging-house.” Similarly, the amending Acts—Sanitary Act, 1866(f), Sanitary Law Amendment Act, 1874(g), and the Public Health Act, 1875(h)—failed to define a common lodging-house.

(a) 29 Halsbury's Statutes 476.

(b) 13 Halsbury's Statutes 531.

(c) Sect. 116, Towns Improvement Clauses Act, 1847; 13 Halsbury's Statutes 569.

(d) 11 Halsbury's Statutes 882.

(e) 11 Halsbury's Statutes 885.

(f) 11 Halsbury's Statutes 1005.

(g) 11 Halsbury's Statutes 1006.

(h) 13 Halsbury's Statutes 623.

In 1855, the Law Officers of the Crown advised as follows as to the meaning of the term "common lodging-house" used in the Act of 1851, *supra* :—

"It may be difficult to give a precise definition of the term 'common lodging house,' but looking at the preamble and general provisions of the Act it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received for short periods and, though strangers to one another, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, public houses or lodgings let to the upper and middle classes."

Subsequently they amplified the above opinion—

"Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household. We are of opinion that the period of letting is unimportant in determining whether a common lodging-house comes under the Act now in question."

In the absence of a statutory definition, the opinion of the Law Officers has generally been adopted, and, in the main, approved by the courts in the various cases that have been heard.

The Acts of 1851 and 1853, *supra*, were extended to Ireland by the Common Lodging Houses (Ireland) Act, 1860, which, in section 3, defined the term "common lodging-house" as meaning "a house in which persons are harboured or lodged for hire for a single night, or for less than a week at a time, or any part of which is let for any term less than a week." It will be observed that this definition only includes houses where a payment is made, consequently it was held that the Acts of 1851 and 1853 did not apply to a lodging-house in which poor persons were received without payment of any kind(*i*), the contrary decision in a former case(*h*) (when the definition in the Irish Act was not brought to the notice of the court) being overruled, but a charitable institution conducted as a common lodging-house, is a "common lodging-house" subject to the provisions of the law relating thereto, in spite of the fact that it is not run as a business for profit(*l*). Subsequently it was held(*m*), that the decision in the above case (*Parker v. Talbot*) applied to the Public Health Act, 1875, and that some part of the house must be let for a period of less than a week to constitute the premises a common lodging-house. In a case taken under the London County Council

(*i*) *Parker v. Talbot*, [1905] 2 Ch. 643 ; 38 Digest 210, 441.

(*h*) *Gilbert v. Jones*, [1905] 2 K.B. 691 ; 38 Digest 210, 446.

(*l*) *Logsdon v. Booth*, [1900] 1 Q.B. 401 ; 38 Digest 210, 449.

(*m*) *Daley v. Lees*, [1926] 1 K.B. 40 ; 38 Digest 210, 443.

(General Powers) Act, 1902(*n*), it was held that there must be either a common sleeping or eating room, otherwise the house is not a common lodging-house(*o*). Simply because the sleeping accommodation is provided in cubicles, does not render the premises any the less a common lodging-house(*p*).

Based on the legal decisions referred to above, section 235 of the Act of 1936 defines a "common lodging-house" as meaning—

"a house (other than a public assistance institution) provided for the purpose of accommodating by night poor persons, not being members of the same family, who resort thereto and are allowed to occupy one common room for the purpose of sleeping or eating, and includes, where part only of a house is so used, the part so used."

It will be observed that this definition does not include a reference to the period of letting or to the lodging being for hire. It is clear therefore that premises may now be dealt with as a "common lodging-house," notwithstanding the fact that no charge is made for the accommodation or that the period of letting exceeds one week(*q*). The essential conditions rendering premises a common lodging-house are therefore as follows:—

- (i)—accommodation is for poor persons ;
- (ii)—such persons not being members of the same family ; and
- (iii)—accommodation is provided in one common room, either for sleeping or eating.

Where any proceedings are taken in respect of common lodging-houses and it is alleged that the inmates of any house or part of a house are members of the same family, the burden of proof rests upon the person making such allegation(*r*). It has been held that a registered common lodging-house is a "dwelling-house" within section 25 of the Housing Act, 1936(*s*), and may be included as such in a clearance area(*t*).

REGISTRATION OF KEEPER OF COMMON LODGING-HOUSE.

Section 236 of the Act of 1936, *post*, p. 406, requires every keeper of a common lodging-house to be registered before any lodger is received therein.

(*n*) 11 Halsbury's Statutes 1247.

(*o*) *L.C.C. v. Hankins*, [1914] 1 K.B. 490 ; 38 Digest 210, 442.

(*p*) *Logsdon v. Trotter*, [1900] 1 Q.B. 617 ; 38 Digest 211, 451.

(*q*) See *People's Hostels, Ltd. v. Turley*, [1938] 4 All E.R. 72 ; Digest Supp.

(*r*) Sect. 248(1), Public Health Act, 1936 ; 29 Halsbury's Statutes 481.

(*s*) 29 Halsbury's Statutes 584.

Section 236, Public Health Act, 1936.—No person to keep a common lodging-house unless registered in respect thereof.

No person shall keep a common lodging-house or receive a lodger therein, unless he is registered as the keeper thereof under this Part of this Act:

Provided that—

- (a) a person who immediately before the commencement of this Act was registered under any enactment repealed by this Act as the keeper of a common lodging-house shall for a period of three months after the commencement of this Act be deemed to be registered under this Act as the keeper of that house; and
- (b) when the registered keeper of a common lodging-house dies, his widow or any other member of his family may for a period not exceeding four weeks from his death, or such longer period as the local authority may sanction, keep the house as a common lodging-house without being registered as the keeper thereof.

Every local authority is required by section 237 of the Act of 1936 to keep a register showing—

- (a) the full names and the place of residence of every person registered as the keeper of a common lodging-house;
- (b) the situation of every such lodging-house;
- (c) the number of persons authorised to be received in the lodging-house; and
- (d) the full names and the places of residence of any persons who are to act as deputies of the keeper of the lodging-house.

An authority *must* keep a register and it has been held that, after passing a resolution that a house should be registered, they cannot later resolve that it be not registered, the clerk not having carried out the resolution, the keeper nor the house having been formally registered(u). There is no power to charge a fee for registration.

Having received an application for registration or renewal of registration as a keeper of a common lodging-house, the local authority must register or re-register the applicant, and issue to him a certificate of registration, subject to the provisions of section 238 of the Act of 1936, *infra*.

Section 238, Public Health Act, 1936.—Provisions with respect to registration.

- (1) Subject as hereinafter provided, a local authority on receiving from any person an application for registration, or for the renewal of his registration, as a keeper of a common lodging-house, shall register the applicant in respect of the common lodging-house named in the application, or renew his registration in respect thereof, and issue to him a certificate of registration, or of renewal of registration:

Provided that the authority—

- (a) shall not register an applicant, until an officer of the authority has inspected the premises named in the application and has made a report thereon; and

- (b) may refuse to register, or to renew the registration of, an applicant, if they are satisfied that—
- (i) he, or any person employed, or proposed to be employed, by him at the common lodging-house as a deputy or otherwise, is not a fit person, whether by reason of age or otherwise, to keep, or to be employed at, a common lodging-house; or
 - (ii) the premises are not suitable for use as a common lodging-house, or are not, as regards sanitation and water supply and in other respects, including means of escape in case of fire, suitably equipped for use as such; or
 - (iii) the use of the premises as a common lodging-house is likely to occasion inconvenience or annoyance to persons residing in the neighbourhood.
- (2) The registration of a person as a keeper of a common lodging-house shall remain in force for such period, not exceeding thirteen months, as may be fixed by the authority, but may from time to time be renewed by them for a period not exceeding thirteen months at any one time.
- (3) If a local authority refuse to grant or to renew registration under this section, they shall, if required by the applicant, deliver to him a statement in writing of the grounds on which his application is refused.
- (4) A local authority shall at any time, on the application of a person registered as a keeper of a common lodging-house, remove from the register the name of any person entered therein as a deputy of the keeper, or insert therein the name of any other person, being a person approved by the authority, whom the keeper proposes to employ as a deputy, and shall make any consequential alterations in the certificate of registration.

It will be observed that an applicant may not be registered until the premises concerned have been inspected and a report thereon submitted to the local authority. The following extract from the Memorandum of the Ministry of Health to their Model Byelaws^(w), relating to the inspection of common lodging-houses, indicates the points to which attention should be directed.

- The house should possess enough kitchen and dayroom accommodation apart from its bedrooms; rooms that are partially underground may not be improper for dayrooms, but should not be registered for use as bedrooms;
- the water supply, the closet or privy accommodation, and the refuse receptacles should be proportionate to the numbers for which the house is to be registered;
- if water is not supplied from works with constant service, there should be enough to provide, for each lodger, not less than ten gallons a day where there are waterclosets, or five gallons a day where there are dry closets;
- for every twenty lodgers a separate closet or privy should be required;

^(w) Ministry of Health Model Byelaws relating to Common Lodging-houses, Series III n 4 (1933)

the washing accommodation should, wherever practicable, be in a special place and not be in the bedrooms, and the basins for personal washing should be fixed and have watertaps and discharge pipes connected with them;

if water is stored in cisterns, they should be conveniently placed and of proper construction to prevent any fouling of water; walls should not be papered.

LOCAL AUTHORITY MAY REFUSE TO REGISTER KEEPER OF COMMON LODGING-HOUSE.

It will be seen that the local authority may refuse to register or renew the registration of any person as a keeper of a common lodging-house, where they are satisfied on any of the grounds set forth in proviso (a) to subsection (1) of section 238, *supra*, that it is reasonable to do so. It should be observed that registration does not now depend upon the approval of an officer of the local authority, as was the case under the repealed section 78 of the Public Health Act, 1875(x), neither is it essential for an applicant to produce a certificate of character signed by three householders in the area. In effect, however, the omission of these requirements is not important, because the local authority are still required to have the premises inspected by an officer of the authority and a report prepared, and it is unlikely that an authority would act contrary to the advice of the inspecting officer.

Where a local authority refuse to register an applicant as a keeper of a common lodging-house or to renew his registration, they must, if requested to do so by the applicant, supply him with a written statement of their reasons for refusing to register or renew the registration(y).

Where any person is aggrieved by the refusal of a local authority to register or re-register him as a keeper of a common lodging-house, he may appeal to a court of summary jurisdiction(z).

BYELAWS AS TO COMMON LODGING-HOUSES.

Section 240 of the Act of 1936, *infra*, enables a local authority to make byelaws regarding common lodging-houses.

Section 240, Public Health Act, 1936.—Byelaws as to common lodging-houses.

Every local authority may and, if so required by the Minister shall, make byelaws—

(x) 13 Halsbury's Statutes 657.

(y) Sect. 238(3), Public Health Act, 1936; see *ante*, p. 407.

(z) *Ibid*, sect. 239; 29 Halsbury's Statutes 478.

- (a) for fixing the number of persons who may be received into a common lodging-house, and for the separation of the sexes therein;
- (b) for promoting cleanliness and ventilation in such lodging-houses, and requiring the walls and ceilings thereof to be lime-washed, or treated with some other suitable preparation, at specified intervals;
- (c) with respect to the taking of precautions when any case of infectious disease occurs in such a lodging-house; and
- (d) generally for the well-ordering of such lodging-houses.

The Ministry of Health have issued a Model Series of Byelaws(a), for the guidance of local authorities. The procedure relating to the making and confirmation of byelaws is contained in sections 250–252, local Government Act, 1933(b).

It should be noted that section 240, *supra*, enables byelaws to be made with respect to the limewashing, etc., of walls and ceilings. Previously, this matter was dealt with under section 82 of the Public Health Act, 1875(c), which was repealed and not re-enacted. When the Ministry of Health revise their Model Byelaws, clauses relating to limewashing will no doubt be included.

It should be noted that the Byelaws require the keeper of a common lodging-house to exhibit a notice or card in each room showing the maximum number of lodgers authorised to be received in such room. These notices are best supplied on stout cardboard and varnished, and the rooms should be identified by means of numbers painted or marked on the doors.

MANAGEMENT AND CONTROL OF COMMON LODGING-HOUSES.

Section 241 of the Act of 1936, *infra*, deals with several general matters regarding the management and control of common lodging-houses.

Section 241, Public Health Act, 1936.—Management and control of common lodging-houses.

- (1) The keeper of a common lodging-house shall, if required by the local authority so to do, affix, and keep affixed and undefaced and legible, a notice with the words "Registered Common Lodging-House" in some conspicuous place on the outside of the house.
- (2) Either the keeper of the lodging-house, or a deputy registered under this Part of this Act, shall manage the lodging-house and exercise supervision over persons using it, and either the keeper or a deputy so registered shall be at the lodging-house continuously between the hours of nine o'clock in the evening and six o'clock in the morning of the following day.

(a) Ministry of Health Model Byelaws, Series No. III, 1933.

(b) 26 Halsbury's Statutes 440–443; and see *ante*, p. 5.

(c) 13 Halsbury's Statutes 658.

- (3) The local authority may by notice require the keeper of a common lodging-house in which beggars or vagrants are received to report daily to them, or to such person as they may direct, every lodger who resorted to the house during the preceding day or night, but an authority who require such reports to be made shall supply to the keeper of the lodging-house schedules to be filled up by him with the information required and to be transmitted by him in accordance with their notice.
- (4) The keeper of a common lodging-house, and every other person having the care or taking part in the management thereof, shall at all times, if required by an authorised officer of the local authority, allow him to have free access to all parts of the house.

It is left to the discretion of the local authority as to whether the notice referred to in subsection (1), *supra*, is affixed or not, but generally speaking it is the practice to require the fixing of the notice.

POWER OF ENTRY TO COMMON LODGING-HOUSES.

Subsection (4) of section 241 of the Act of 1936, *supra*, enables an authorised officer of a local authority to enter a common lodging-house, at all times, and he may enter every part of the house. Under section 343 of the Act of 1936(*d*), any officer of a local authority authorised generally or specially to act in connection with the supervision and inspection of common lodging-houses, is an "authorised officer" for the purposes of subsection (4), *supra*, but the sanitary inspector is by virtue of his appointment *ex-officio* an "authorised officer" for matters coming within his province and it is reasonable to assume that he is an authorised officer in regard to common lodging-houses without being specially appointed for the purpose.

INFECTIOUS DISEASES AND COMMON LODGING-HOUSES.

Owing to the short periods of stay of occupants of common lodging-houses, and the fact that such persons frequently move rapidly from town to town, it is extremely important that adequate steps should be taken to prevent the spread of infectious diseases through the movement of persons from one lodging-house to another.

The keeper of a common lodging-house is required to give immediate notice to the medical officer of health and to the relieving officer of the district, whenever a person in the lodging-house is suffering from any *infectious* disease(*e*). The keeper is still liable to give notice, even though himself un-

(*d*) 29 Halsbury's Statutes 536.

(*e*) Sect. 242, Public Health Act, 1936; 29 Halsbury's Statutes 480.

aware of the case of disease, if his deputy knew of it(f). The term "infectious disease" is not defined in the Act of 1936, but the expression "notifiable disease" is defined in section 343 of the Act (see *post*, p. 418). It would appear that an offence is committed under section 242 of the Act of 1936(ff) if a keeper of a common lodging-house fails to give notice where any case of infectious disease occurs, irrespective of whether such disease is notifiable in the district or not. For example, chicken-pox, whooping cough and measles, are not included under the general definition of "notifiable disease," and although they may be so included, in accordance with the procedure laid down in section 147 of the Act of 1936 (see *post*, p. 419), there are many districts where those diseases are not notifiable. In such circumstances, it is still the duty of the keeper to inform the medical officer of health and relieving officer whenever a case of any of those diseases occurs.

Where the medical officer of health has reasonable grounds for believing that there is in a common lodging-house a person who is suffering, or has recently suffered, from a *notifiable* disease, a justice may authorise him by warrant to enter the lodging-house and examine any person found therein(g). Where a warrant is issued in accordance with this procedure, the medical officer of health is entitled to examine any person in the lodging-house, and not merely the actual lodgers.

Section 244 of the Act of 1936, *infra*, empowers a local authority to order the removal to hospital of any person lodging in a common lodging-house who is suffering from a *notifiable* disease.

Section 244, Public Health Act, 1936.—Power to remove to hospital inmate of common lodging-house suffering from a notifiable disease.

- (1) If a local authority are satisfied that a person lodging in a common lodging-house is suffering from a notifiable disease and that serious risk of infection is thereby caused to other persons, and that accommodation for him is available in a suitable hospital or institution, they may, with the consent of the superintending body of the hospital or institution, order him to be removed thereto and maintained therein at their cost.
- (2) The officer of the local authority to whom an order under this section is addressed and any officer of the hospital or institution in question may do all acts necessary for giving effect to the order.

Sections 243 and 244 of the Act of 1936, *supra*, apply only in the case of a "notifiable" disease and not necessarily to all "infectious" diseases. Presumably a local authority

(f) *Logsdon v. Holland* (1898), 14 T.L.R. 449.

(ff) 29 Halsbury's Statutes 480.

(g) Sect. 243. Public Health Act, 1936: 29 Halsbury's Statutes 480.

have no power to order the removal to hospital of a person suffering from an infectious disease which is not notifiable within the area of the authority, although the keeper of the lodging-house must notify the medical officer of health if there is a case of infectious disease in the lodging-house, in accordance with section 242, *supra*.

On the application of a local authority, a court of summary jurisdiction may by order close a common lodging-house, where they are satisfied that it is necessary to do so in the interests of the public health on account of the existence or recent occurrence of a case of *notifiable* disease. The lodging-house must remain closed until it is certified by the medical officer of health to be free from infection(*h*). If any person contravenes or fails to obey an order made under section 245(*h*), he is liable to a penalty of five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor(*i*).

Where the keeper of a common lodging-house or any other person suffers damage by reason of the exercise by the local authority of their powers relating to the closure of a common lodging-house, and the person is not himself in default, the authority must pay full compensation. Details as to the payment of compensation will be found in section 278 of the Act of 1936 (see *ante*, p. 82).

OFFENCES IN CONNECTION WITH COMMON LODGING-HOUSES.

Section 246 of the Act of 1936, *infra*, details the offences in connection with common lodging-houses.

Section 246, Public Health Act, 1936.—Offences in connection with common lodging-houses.

Any person who—

- (a) contravenes, or fails to comply with, any of the provisions of this Part of this Act, or any order made under the last preceding section; or
- (b) being the registered keeper of a common lodging-house, fails to keep the premises suitably equipped for use as such; or
- (c) applies to be registered as the keeper of a common lodging-house at a time when he is, under the next succeeding section, disqualified for being so registered; or
- (d) in an application for registration, or for the renewal of his registration, as a keeper of a common lodging-house makes any statement which he knows to be false,

shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.

(*h*) *Ibid*, sect. 245; 29 Halsbury's Statutes 480.

(*i*) *Ibid*, sect. 246(a), *infra*.

Where the registered keeper of a common lodging-house is convicted of any offence relating to a common lodging-house, either under the Act of 1936 or any of the byelaws made thereunder, the court may cancel his registration for such period as they think fit(*k*).

Where legal proceedings are taken for any offence in regard to a common lodging-house, the clerk of the local authority must supply free of charge to any person upon application at a reasonable hour, a certified copy of any entry in the register of common lodging-houses(*l*), and such certified copy must be accepted as *prima facie* evidence of the matters recorded in the entry(*m*).

HOUSES-LET-IN-LODGINGS.

There have been numerous cases before the courts to determine whether or not premises are houses-let-in-lodgings. Where the tenant of a house sub-let a portion to another person, and occupied the remainder himself, it was held to be a house-let-in-lodgings(*n*). In a case taken under section 94 of the Public Health (London) Act, 1891(*o*), it was held that a block of artisans' dwellings, divided structurally into separate tenements, where the landlord did not reside, was not a house-let-in-lodgings(*p*). In the case of a six-roomed house, not specially constructed to be let off in separate tenements, and where two rooms on each floor were let to separate tenants, the front door and staircase being in common use, and the landlord did not reside on the premises, it was held to be a house-let-in-lodgings(*q*).

A local authority may, and if required by the Minister of Health must, make byelaws under section 6 of the Housing Act, 1936, with respect to working class houses and any of such byelaws may be limited to houses-let-in-lodgings or occupied by members of more than one family(*r*). Such byelaws may deal with the following matters(*s*):—

- (a) for fixing, and from time to time varying, the number of persons who may occupy such a house, and for the separation of the sexes therein;
- (b) for the registration and inspection of such houses;

(*k*) *Ibid.*, sect. 247; 29 Halsbury's Statutes 481.

(*l*) *Ibid.*, sect. 248(3); 29 Halsbury's Statutes 482.

(*m*) *Ibid.*, sect. 248(2); 29 Halsbury's Statutes 481.

(*n*) *Roots v. Beaumont* (1886), 51 J.P. 197; 38 Digest 209, 437.

(*o*) 11 Halsbury's Statutes 1076.

(*p*) *Weatheritt v. Cantlay*, [1901] 2 K.B. 285; 38 Digest 209, 438.

(*q*) *Kyffin v. Simmons* (1903), 67 J.P. 227; 38 Digest 209, 439.

(*r*) Sect. 6(3), Housing Act, 1936; 29 Halsbury's Statutes 569.

(*s*) *Ibid.*, sect. 6(1); 29 Halsbury's Statutes 568.

- (c) for enforcing drainage and promoting cleanliness and ventilation of such houses ;
- (d) for requiring provision adequate for the use of, and readily accessible to, each family, of—
 - (i) closet accommodation ;
 - (ii) water supply and washing accommodation ;
 - (iii) accommodation for the storage, preparation, and cooking of food ;
 and, where necessary, for securing separate accommodation as aforesaid for every part of any such house which is occupied as a separate dwelling ;
- (e) for the keeping in repair and adequate lighting of any common staircases in such houses ;
- (f) for securing stability, and the prevention of and safety from fire ;
- (g) for the cleansing and redecoration of the premises at stated times, and for the paving of the courts and courtyards ;
- (h) for the provision of handrails, where necessary, for all staircases of such houses ;
- (i) for securing the adequate lighting of every room in such houses ;
- (j) for the prevention of nuisances arising from or in a part of a building or an underground room in respect of which a closing order under section twelve of this Act is in force ;
- (k) as respects houses situate in the administrative county of London, for the taking of precautions in the case of infectious disease.

It should be noted that any byelaws made with respect to paragraph (a), *supra*, cease to have effect as from the date when the provisions of Part IV of the Housing Act, 1936 (relating to the abatement of overcrowding) come into operation^(t). This means that the standard laid down in the Fifth Schedule relating to the number of persons permitted to use a house for sleeping purposes, must be used in determining whether a house-let-in-lodgings is overcrowded or not. This standard is as follows :—

Fifth Schedule, Housing Act, 1936.—Number of Persons permitted to use a house for sleeping.

For the purposes of Part IV. of this Act, the expression “ the permitted number of persons ” means, in relation to any dwelling-house, either—

- (a) the number specified in the second column of Table I in the annex hereto in relation to a house consisting of the number of rooms of which that house consists, or
- (b) the aggregate for all the rooms in the house obtained by reckoning, for each room therein of the floor area specified in the first column of Table II in the annex hereto, the number specified in the second column of that Table in relation to that area,

whichever is the less :

Provided that in computing for the purposes of the said Table I the number of rooms in a house, no regard shall be had to any room having a floor area of less than 50 square feet.

ANNEX.

Table 1.

Where a house consists of—

(a) One room	2
(b) Two rooms	3
(c) Three rooms	5
(d) Four rooms	7½
(e) Five rooms or more	10, with an additional 2 in respect of each room in excess of five.

Table II

Where the floor area of a room is—

(a) 110 sq. ft. or more	..	..	..	..	2
(b) 90 sq. ft. or more, but less than 110 sq. ft.	..	..	1½		
(c) 70 sq. ft. or more, but less than 90 sq. ft.	..	..	1		
(d) 50 sq. ft. or more, but less than 70 sq. ft.	..	..	½		
(e) Under 50 sq. ft.	..	..	..	..	Nil

It must be emphasized that the standard laid down above, fixes for each house the “number” of persons who may sleep in it at any one time, and it does not prescribe how such number of persons shall actually sleep or in any way restrict the use of a particular room. For the purpose of the provisions relating to overcrowding, the expression “room” does not include any room of a type not normally used in the locality either as a living room or as a bedroom, and “dwelling-house” means any premises used as a separate dwelling by members of the working classes or of a type suitable for such use(u). Every part of a house therefore which is occupied as a dwelling by a separate family is a “house” within the meaning of the Housing Act, 1936, and the “permitted number” of persons who may sleep in such portion of the house must be calculated separately, so that one structurally separate house, occupied by a number of families, will have several “permitted numbers,” one for each part of the house used by a separate family.

MODEL BYELAWS.

The Ministry of Health have issued a Model Series of Byelaws for the guidance of local authorities(a).

REGISTRATION AND INSPECTION OF HOUSES-LET-IN-
LODGINGS.

Where the local authority adopt byelaws under section 6 of the Housing Act, 1936(b), requiring the registration of

(u) *Ibid.*, sect. 68; 29 Halsbury's Statutes 616.

(a) Ministry of Health, Model Byelaws for Securing the Improvement of Housing Conditions, Series No. XIII, September, 1935. H.M.S.O.

(b) 29 Halsbury's Statutes 568.

all houses-let-in-lodgings or occupied by members of more than one family(c), they are empowered to require the landlord to supply information relative to the size of the house, number of rooms, etc.

Before premises are registered, they should be inspected by the sanitary inspector and the ordinary housing inspection card used for inspections carried out under the Housing Act, 1936, and the Regulations made thereunder, may be employed for this purpose(d).

SEAMEN'S LODGING-HOUSES.

Section 214 of the Merchant Shipping Act, 1894(e), empowers a local authority (*i.e.* London County Council, and local authorities under the Public Health Act (see *ante*, p. 15)), whose district includes a seaport, with the approval of the Board of Trade, to make byelaws relating to seamen's lodging-houses, dealing, *inter alia*, with the licensing and inspection of such premises, sanitary conditions, exclusion of persons of improper character, and the due execution of the byelaws.

PROVISION OF LODGING-HOUSES BY LOCAL AUTHORITIES.

In connection with the provision of housing accommodation, a local authority are entitled to provide lodging-houses(f) and they *must* make byelaws—

- (a) for securing that the lodging-houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the local authority;
- (b) for securing the due separation at night of men and boys above eight years old from women and girls;
- (c) for preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances; and
- (d) for determining the duties of the officers, servants and others appointed by the local authority.

A printed copy of the byelaws or sufficient abstract thereof must be put and at all times kept in every room of the lodging-house(g).

(c) See Ministry of Health, Model Byelaws, Series XIII B, 1935, H.M.S.O.

(d) See the author's "Housing Administration," 2nd Edn. (Butterworth and Co.), for full details as to housing inspections, p. 67 *et seq.*

(e) 18 Halsbury's Statutes 238.

(f) Sect. 72(4), Housing Act, 1936; 29 Halsbury's Statutes 620.

(g) *Ibid.*, sect. 84(2); 29 Halsbury's Statutes 626.

PART V.

INFECTIOUS DISEASES AND DISINFECTION.

CHAPTER 19.—INFECTIOUS DISEASES.

The prevention, notification and treatment of infectious diseases is an important part of the work of sanitary authorities. It is true to say that many, if not all, of the earlier sanitary reforms put into operation through the medium of the Public Health Acts, originated in attempts made to prevent or control the spread of infectious diseases. Later, legislation appeared dealing with the prevention of disease generally, designed to reduce mortality and invalidity, and at the same time to promote the health of the people. In spite of the fact that many diseases, previously prevalent in epidemic form, have disappeared entirely, and in other cases outbreaks of the disease occur only rarely, it is nevertheless incumbent upon sanitary authorities to be constantly on the watch in order to prevent a recurrence of outbreaks of infectious diseases. Consequently local authorities have extensive powers under the Act of 1936 enabling them to deal with cases of disease, and to take appropriate measures with a view to the prevention of the spread of infection.

POWER OF MINISTER OF HEALTH TO MAKE REGULATIONS.

With a view to preventing and treating cases of infectious disease, the Minister of Health is empowered by section 143 of the Act of 1936 to make regulations—

- (a) with a view to the treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such diseases ;
- (b) for preventing danger to public health from vessels or aircraft arriving at any place ; and
- (c) for preventing the spread of infection by means of any vessel or aircraft leaving any place, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any other country.

Regulations made under paragraph (b), *supra*, may only be issued by the Minister after consultation with the Board of Trade, and in the case of paragraph (c), the Secretary of State.

The Regulations may provide for—

- (a) the signals to be displayed by vessels or aircraft having on board any case of epidemic, endemic or infectious disease ;
- (b) the questions to be answered by masters, pilots and other persons on board any vessel or aircraft as to cases of such disease on board during the voyage or on arrival ;
- (c) the detention of vessels or aircraft and of persons on board them ;
- (d) the duties to be performed in cases of such diseases by masters, pilots, and other persons on board vessels or aircraft,

and may authorise the making of charges and provide for the recovery of such charges and of any expenses incurred in disinfection.

Subsection (4) of section 143 of the Act of 1936^(a), gives power of entry to authorised officers of local authorities, to any premises, vessel or aircraft. Any person neglecting or refusing to carry out the provisions of any regulations, or obstructing the execution thereof, is liable to a penalty.

Under the repealed provisions of the Public Health Act, 1875^(b), various Regulations were made dealing with numerous diseases. In some instances, the Regulations provided for the notification of diseases not notifiable under the Public Health Act itself (see *infra*).

NOTIFICATION OF INFECTIOUS DISEASES.

In order that local authorities may be made aware of the existence of cases of infectious disease occurring in their area, so that they may take the appropriate steps to deal with them, such diseases must be notified to the medical officer of health. Infectious diseases are made notifiable either by—

- (i)—The Act of 1936 ; or
- (ii)—Regulations made under section 143 of the Act of 1936 ;

and may be notifiable either—

- (i)—throughout the country as a whole ; or
- (ii)—in certain local government districts only.

(a) Diseases notifiable under Public Health Act, 1936.—

The term “ notifiable disease ” in the Act of 1936, means the following diseases, *viz.* :—

- | | |
|----------------------|---------------------------------|
| 1—smallpox ; | 6—scarlatina or scarlet fever ; |
| 2—cholera ; | 7—typhus fever ; |
| 3—diphtheria ; | 8—typhoid fever ; |
| 4—membranous croup ; | 9—enteric fever ; |
| 5—erysipelas ; | 10—relapsing fever ; and |

(a) 29 Halsbury's Statutes 428.

(b) See sect. 130 (as amended from time to time) ; 13 Halsbury's Statutes

- 11—as respects any particular district, any infectious disease to which Part V of this Act or any corresponding enactment repealed by this Act has been applied by the local authority of the district in manner provided by that Part of that enactment(c).

Section 147 of the Act of 1936, *infra*, empowers a local authority to add to the list of notifiable diseases (referred to in No. 11, *supra*) specified above, subject, except in case of emergency, to the approval of the Minister of Health. Where an order is made under this section, the disease referred to in the order is notifiable within the district of the local authority making the order, and for such period as the order remains in force. The diseases added to the list of notifiable diseases in accordance with the procedure laid down in section 147, include measles, whooping-cough, and chicken-pox.

Section 147, Public Health Act, 1936.—Power of local authority to declare further diseases to be notifiable.

- (1) A local authority may order that the provisions of this Part of this Act relating to the notification of disease shall apply in their district to an infectious disease not being a disease specifically mentioned in the definition of "notifiable disease" contained in this Act, and, while such an order is in operation, an infectious disease mentioned therein shall, within the district of the authority, be a notifiable disease to which the provisions of this Act relating to notifiable diseases apply :

Provided that, subject to the provisions of this section with respect to a temporary order made in a case of an emergency, an order made under this section shall have no effect until it has been approved by the Minister and duly advertised.

- (2) When any such order has been approved by the Minister, the local authority shall give notice of the order by advertisement in a local newspaper circulating in the district and in such other manner as they think sufficient for informing persons interested, and shall also send a copy to each registered medical practitioner who after due inquiry is ascertained to be practising in their district, and the order shall come into operation on such date, not being earlier than one week after the date of the publication of the advertisement of the order in a local newspaper, as the local authority may fix.
- (3) If, in a case which appears to a local authority to be one of emergency, the authority resolve under this section to make a temporary order and declare in their resolution the nature of the emergency, the order may be advertised at once in accordance with the provisions of the last preceding subsection and shall come into operation at the expiration of one week from the date of the publication of the advertisement :

Provided that a copy of the resolution shall be transmitted to the Minister as soon as it is passed, and the order shall, unless previously approved by the Minister, cease to be in force at the expiration of one month after it is made, and may be revoked by the Minister at any earlier date.

Any such temporary order shall specify the period during which it is to continue in operation.

- (4) An order made under this section may be varied or revoked by an order made and approved in like manner as the original order.

Diseases specifically mentioned in the definition in section 343(c), are notifiable throughout the country as a whole, whereas those added to the list by order of a local authority are notifiable only in the area of the local authority concerned.

(b) Diseases notifiable by Regulations made by the Minister of Health.—From time to time the Minister of Health has, by Regulations, required certain specific diseases, not directly notifiable by the Public Health Act, to be notified to local authorities. These diseases are notifiable throughout the country as a whole. The following diseases have been made notifiable by Regulations made by the Minister.

- | | |
|--|-----------------------------------|
| (i)—Plague(<i>d</i>) ; | (viii)—Malaria, |
| (ii)—Cerebro-spinal fever, | (ix)—Dysentery, |
| (iii)—Acute poliomyelitis(<i>e</i>) ; | (x)—Acute primary |
| (iv)—Acute encephalitis | pneumonia, |
| lethargica, | (xi)—Acute influenzal pneu- |
| (v)—Acute Polio-encephalitis(<i>f</i>) ; | monia(<i>i</i>) ; |
| (vi)—Ophthalmia neona- | (xii)—Tuberculosis(<i>h</i>) ; |
| torum(<i>g</i>) | (xiii)—Measles, |
| (vii)—Puerperal pyrexia(<i>h</i>) ; | (xiv)—Whooping cough(<i>l</i>). |

It should be noted that the diseases enumerated above are not "notifiable diseases" within the meaning of the Act of 1936, although they are undoubtedly "infectious diseases." They are not therefore subject to many of the provisions of that Act referred to in the present chapter, and care should be taken to distinguish those powers relating to "infectious diseases" from those affecting "notifiable diseases."

(c) Procedure with respect to notification.—The duty of notifying the occurrence of a case of infectious disease falls

(*d*) Epidemic Regulations: Notification of Cases of Plague (General) 1900. S.R. and O., 1900, No. 695.

(*e*) Public Health (Cerebro-spinal Fever and Acute Poliomyelitis) Regulations; 1912. S.R. & O., 1912, No. 1226.

(*f*) Public Health (Acute Encephalitis Lethargica and Acute Polio-encephalitis) Regulations, 1918 and 1919; S.R. and O., 1918, No. 1741, and S.R. and O., 1919, No. 2048.

(*g*) Public Health (Ophthalmia Neonatorum) Regulations, 1926, 1928 and 1937; S.R. and O., 1926, No. 971; S.R. and O., 1928, No. 419; and S.R. and O., 1937, No. 35.

(*h*) Puerperal Pyrexia Regulations, 1939; S.R. and O., 1939, No. 259.

(*i*) Public Health (Infectious Disease) Regulations, 1927; S.R. and O., 1927, No. 1004.

(*h*) Public Health (Tuberculosis) Regulations, 1930; S.R. and O., 1930, No. 572.

(*l*) Measles and Whooping Cough Regulations, 1940; S.R. and O., 1940, No. 904.

upon the head of the family to which the patient belongs or other responsible person in the house in the absence of the former, and upon the medical practitioner attending upon the patient, in accordance with section 144 of the Act of 1936, *infra*.

Section 144, Public Health Act, 1936.—Obligation to notify certain diseases.

- (1) When an inmate of any building used for human habitation, not being a hospital in which persons suffering from an infectious disease are received, is suffering from a notifiable disease—
 - (a) the head of the family to which that inmate (in this section referred to as “the patient”) belongs and, in his default, the nearest relatives of the patient present in the building or in attendance on the patient, and, in default of such relatives, every person in charge of or in attendance on the patient, and, in default of any such person, the occupier of the building, shall, as soon as he becomes aware that the patient is suffering from a notifiable disease, send notice thereof to the medical officer of health of the district in which the building is situate;
 - (b) every medical practitioner attending on, or called in to visit, the patient shall, as soon as he becomes aware that the patient is suffering from a notifiable disease, send to the medical officer of health of the district in which the building is situate a certificate stating the name of the patient, the situation of the building, and the disease from which, in the opinion of that medical practitioner, the patient is suffering.
- (2) Any person who fails to send a notice or certificate which he is required by this section to send shall be liable to a fine not exceeding forty shillings:
Provided that a person who is required to send notice only in default of some other person shall not be liable to a fine, if he satisfies the court that he believed, and had reasonable grounds for believing, that the notice had been duly sent.
- (3) In this section the expression “occupier” includes a person having the charge, management, or control of the building, or of the part of a building, in which the patient is, and in the case of a building the whole of which is ordinarily let out in separate tenements, or in the case of a lodging-house the whole of which is ordinarily let to lodgers, the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person.

It should be noted that the duty of notification extends to ships and boats, as if the vessel were a house, building or premises within the district of the local authority, and the master or officer in charge were the occupier^(m). Similarly, it extends to tents, vans, sheds and similar structures used for human habitation⁽ⁿ⁾.

(m) Sect. 267, Public Health Act, 1936; and see *ante*, p. 83.

(n) *Ibid*, sect. 268; and see *ante*, p. 395.

In its application to measles and whooping cough(*o*) and puerperal pyrexia(*p*), section 144, *supra*, is modified so as to place the responsibility for notification on the medical practitioner attending the patient. The head of the family is not required to notify cases of these diseases.

A local authority are required to supply free of charge to medical practitioners, forms for the notification of cases of infectious disease, and they must pay a fee of 2/6 in respect of each case occurring in private practice and 1/- in respect of each case occurring at a public institution. Where the medical officer of health is also the medical practitioner attending the patient, he is entitled to the fee (q). In the case of measles and whooping cough, the fee is 1s. in respect of all cases(r).

The forms for notification have been prescribed by the following Regulations:—

- (i)—*Public Health (Notification of Infectious Disease) Regulations, 1918.*(s)

Smallpox,	Plague,
Cholera,	Cerebro-spinal fever,
Diphtheria,	Acute poliomyelitis,
Membranous croup,	Acute encephalitis lethargica,
Erysipelas,	Acute polio-encephalitis,
Scarlet fever,	Ophthalmia neonatorum,
Typhus fever,	Malaria,
Typhoid fever,	Dysentery,
Enteric fever,	Acute primary pneumonia, and
Relapsing fever,	Acute influenzal pneumonia.

- (ii)—*Puerperal Pyrexia Regulations, 1939* :—(i)
Puerperal pyrexia.

- (iii)—*Public Health (Tuberculosis) Regulations, 1930* :—(u)
Tuberculosis.

- (iv)—*Measles and Whooping Cough Regulations, 1940*:—(x)
- | | |
|----------|-----------------|
| Measles, | Whooping cough. |
|----------|-----------------|

Where a case of a notifiable disease occurs in a building used by or in the occupation of members of the Navy, Army or Air Force, the medical practitioner attending the patient (whether an officer in the forces or not) must notify the medical officer of health of the district concerned. A fee of 1/- per notification is payable if the medical practitioner is in private

(o) Measles and Whooping Cough Regulations, 1940; S.R. and O., 1940, No. 204.

(p) Puerperal Pyrexia Regulations, 1939 ; S.R. and O., 1939, No. 259.

(g) Sect. 145, Public Health Act, 1936; 29 Halsbury's Statutes 430.

(r) Measles and Whooping Cough Regulations, 1940; S.R. and O., 1940, No. 204.

(s) S.R. and O., 1918, No. 67.

(t) S.R. and O., 1939, No. 259.

(u) S.R. and O.. 1930. No. 572.

(x) S.B. and O., 1940, No. 204.

practice but no fee is payable in the case of a notification made by a medical officer in the forces(y).

Upon receipt of notifications of cases of infectious disease, it is the usual practice to enter the details in a register. The following particulars should be included in the infectious diseases register, *viz.* :—

Number of notification.

Date and time of notification.

Name and address of patient.

Name of medical practitioner notifying case (or of other person, if not notified by medical practitioner).

Disease.

Date removed to hospital.

Date discharged from hospital.

Date of onset of disease.

Date of recovery (or death).

Date of disinfection of premises and articles.

Date of exclusion of contacts from school.

Date of release of contacts for return to school.

Remarks.

From this Register, it is a simple matter to complete the various returns required from time to time, including the weekly return to the Minister of Health and, in the case of county district councils, to the county council. It will be observed that the Register should contain appropriate columns for recording the date of recovery of patients and the disinfection of infected premises and articles.

(d) Notification by medical officer of health to Ministry of Health and county council.—Every medical officer of health is required to transmit to the Ministry of Health a weekly statement showing the number of notifications of each infectious disease received by him(z). In the case of a county district council, a similar return must be made to the medical officer of health of the county council. These returns are made direct to the Registrar-General at the Ministry of Health, who supplies to medical officers, printed post cards on which to forward the weekly return.

In the case of certain diseases, the medical officer of health must notify the Ministry of Health immediately he becomes aware of the occurrence of the disease, and (in the case of a county district council) the county medical officer of health. These diseases are as follows :—

(i)—Plague, cholera and smallpox,

(ii)—Serious outbreaks of any disease notified or discovered(a) ;

(y) Sect. 146, Public Health Act, 1936 ; 29 Halsbury's Statutes 430.

(z) Sanitary Officers (Outside London) Regulations, 1935, S.R. and O., 1935, No. 1110, Article 17(3).

(a) *Ibid.*, article 17(7).

- (iii)—Typhus fever,
- (iv)—Indigenous malaria(*b*) ;

In the case of county district councils only, the following special returns must be made to the county medical officer of health, *viz.* :—

- (i)—Copy of every notification of ophthalmia neonatorum(*c*) ;
- (ii)—Copy of every notification of puerperal fever or puerperal pyrexia(*d*) ;
- (iii)—Weekly statement showing particulars of every case of tuberculosis notified(*e*) ;

INQUIRY INTO CASES OF INFECTIOUS DISEASE.

Upon receipt of a notification of a case of infectious disease, inquiries are usually made with a view to ascertaining the source, and preventing the spread, of infection. These inquiries may be made by a medical officer, health visitor, or sanitary inspector, the practice varying in different districts, being determined in some cases by the nature of the disease. For example, when a case of smallpox is notified, it is the usual practice for the medical officer of health himself to visit and confirm the diagnosis ; in a case of puerperal pyrexia or ophthalmia neonatorum, the health visitor generally makes the necessary inquiries ; whilst in other cases, the sanitary inspector frequently visits the house and completes the inquiry form. In some towns, however, a member of the medical staff visits all cases of infectious disease, and there is much to be said for this procedure. It enables an immediate decision to be made as to the necessity or otherwise for removal to hospital, and contacts may be examined with a view to the early detection of “ missed cases.”

The amount of information collected in respect of a case of infectious disease, varies in different districts. In some areas very complete details are obtained ; in others, only the essential information is ascertained.

When the form of inquiry has been completed, it should be returned to the office in order that any necessary details (or corrections, in name or age for example) may be added to the Infectious Diseases Register (see *ante*, p. 423). At

(*b*) Public Health (Infectious Disease) Regulations, 1927, S.R. and O., 1927, No. 1004, Schedule I.

(*c*) Public Health (Notification of Ophthalmia Neonatorum) Regulations, 1926, S.R. and O., 1926, No. 971, Article 8 ; and Public Health (Ophthalmia Neonatorum) (Amendment) Regulations, 1937, S.R. and O., 1937, No. 35.

(*d*) Puerperal Pyrexia Regulations, 1939 ; S.R. and O., 1939, No. 259, Article 4.

(*e*) Public Health (Tuberculosis) Regulations, 1930, S.R. and O., 1930, No. 572, Article 10(7).

the same time, notices should be sent to the schools attended by any children from the infected house, excluding them for the appropriate period (see *post*, p. 438). Infectious disease inquiry forms should be carefully and regularly examined in order to discover if there is any common factor associated with a number of cases of the same disease. For example, it may be that a number of cases of infectious disease occur in houses obtaining milk from a common source; children from a number of houses may attend the same school; or the patients may be employed in the same works. Whenever a factor is found to be common to a number of cases, immediate steps should be taken to determine whether this factor is in any way responsible for the cases of infection. It is extremely important therefore that the inquiry forms should not be regarded merely as a statistical record, but the fullest use should be made of them in order to trace the source of infection and to prevent further cases arising.

Special steps to be taken with regard to certain diseases.—

In addition to the foregoing routine inquiries to be made in all cases of infectious disease, certain diseases call for special investigation and report.

(a) **Malaria.**—Upon becoming aware of a case of malaria, the medical officer of health is required to carry out the duties specified in Part I of the First Schedule to the Public Health (Infectious Diseases) Regulations, 1927 (*f*), *infra*.

1—In every case of malaria occurring in his district of which the medical officer of health becomes aware, and in which he considers that action is necessary to prevent the spread of infection, he shall take all necessary and practicable steps to ensure that the person suffering from malaria—

- (1) is supplied with efficient mosquito netting,
- (2) receives necessary quinine treatment,
- (3) receives proper advice as to the continuation of quinine treatment in order to prevent relapses, and
- (4) receives proper advice as to the precautions to be taken to prevent the spread of infection.

2—On the occurrence within a district of two or more cases in which the infection has, in the opinion of the medical officer of health, been contracted within the district, the local authority may, and if required by the Minister shall, appoint and pay a medical practitioner approved by him who shall—

- (1) make systematic visits to houses where malaria has occurred or where risk of malaria infection arises, and shall offer to examine persons therein who are suspected of being infected with malaria and shall endeavour to obtain material for microscopic examination in order to determine whether malarial infection is present, and

- (2) secure that effective measures are taken to prevent the spread of infection by the administration of quinine, by the use of mosquito netting, and by the destruction of mosquitoes, and otherwise.
- 3—In every case occurring in his district of which the medical officer of health becomes aware and in which he has reason to believe that the infection was contracted in England or Wales (including every case in which the notification relates to a patient in whom the malaria has been induced for therapeutic purposes), the medical officer of health shall immediately send the name and address of the patient to the Minister, and, unless the district is a county borough, to the medical officer of health of the county in which the district is situate.

It should be noted that a medical practitioner is not required to notify a case of malaria occurring in an institution where the infection has been induced for therapeutic purposes, but, at least four days prior to discharge from hospital, the medical practitioner must notify the medical officer of health of the district in which the patient proposes to reside, if he considers that the patient is liable to relapses of malaria. In cases of this kind the special form of notification prescribed in the Second Schedule to the Regulations of 1927 must be used(*g*).

(b) **Typhus fever and relapsing fever.**—The following duties relative to typhus fever and relapsing fever, are prescribed by Part II of the First Schedule to the Regulations of 1927, *supra*.

- 1—In any case of typhus fever or relapsing fever occurring in his district of which the medical officer of health becomes aware,
- (i) he shall immediately send the name and address of the patient to the Minister, and, unless the district is a county borough, to the medical officer of health of the county in which the district is situated;
 - (ii) if he is satisfied that it is necessary, he shall report accordingly to the local authority who may, by notice in writing, require—
 - (a) that such measures as may be specified in the notice shall be immediately taken to the satisfaction of the medical officer of health to obtain the complete destruction of lice on the person and clothing of every occupant of the building, and to secure the destruction of lice or their products in the building;
 - (b) the temporary segregation, for a period to be specified in the notice, of other inmates of the building or of other persons recently in contact with the patient until their persons and clothing have been completely freed from lice.

- (iii) The notice may be addressed to the head of the family to which the patient belongs or to any person in charge of or in attendance on the patient, or any other person in the building of which the patient is an inmate, or the occupier of the building, and also to a person with whom the patient has recently been in contact.

The existence of louse-borne typhus fever in Europe and North Africa, led the Ministry of Health to issue a Circular and Memorandum in November, 1941^(h), dealing with the principal facts relating to the disease and containing information in regard to its administrative control. The Memorandum deals only with the louse-borne form of typhus fever, as it may occur in this country, and contains information relating to its aetiology, general course of the disease, incubation period, onset, rash, fever, nervous system, diagnosis (including laboratory diagnosis), and differential diagnosis.

The following is a summary of the part of the Memorandum relating to administrative control—

- 1—Typhus fever is compulsorily notifiable to the medical officer of health, and every case must be notified by him immediately either by telegram or telephone to the Ministry of Health, Whitehall (see *ante*, p. 423).
- 2—In view of the greater probability of the disease being first introduced into the larger aggregations of population, a number of the principal towns have been asked to organise teams for dealing with an outbreak. The composition of a team will be as follows—

Medical officer	1
Nurses	4
Ambulance driver	1
Ambulance attendant	1
Sanitary inspector	1 or more
Disinfectors	A number

Teams should be duplicated to guard against casual absence and to provide a reserve. The personnel of the teams should be provided with protective clothing and be offered preventive inoculation. A suitable type of protective clothing is described in the Appendix to the Memorandum.

- 3—In view of the difficulty of diagnosis, the services of a medical officer conversant with the disease, should be retained. Assistance can be obtained either from the Ministry of Health or, in London, from the London County Council. On application to the Ministry, a mobile team from the American Red Cross—Harvard Field Hospital Unit will be available for assistance in diagnosis and control in any part of England and Wales.

Samples of blood or blood serum for laboratory diagnosis may be sent, in the London area, to any sector pathologist of the Emergency Medical Service, or, in areas outside London, (a) to

^(h) Circular 2513 and Memo. 252/Med., Ministry of Health, 21st November, 1941. H.M.S.O.

to any laboratory of the Emergency Public Health Laboratory Service, or (b), to the bacteriological laboratory of the nearest university.

- 4—Medical officers of health must give immediate consideration to the question of the provision of hospital accommodation, and in general it will be found advisable to make arrangements with the larger isolation hospitals. A large sheet should be utilised to envelop the patient completely during removal to hospital, which should be done in a vehicle easy to free from lice.

During the admission of a patient to hospital the staff are particularly exposed to the danger of contracting the disease, and the greatest care must be taken during this time. The patient must be taken to a special bathroom, stripped, de-loused and clad in hospital garments by protected attendants before being admitted to a ward set apart for the purpose. The de-lousing must include not only complete disinfection of the patient's clothing but careful de-lousing of his person. This will involve cutting of the hair, shaving where necessary and careful bathing. The greatest care must be taken to see that the patient is thoroughly soaped all over and cleansed in such a manner that all lice are destroyed. In the hospital itself accommodation should be provided where the staff can change into protective clothing, which in due course must be taken off and left for disinfection. Thereafter the staff must pass to a bathroom and finally to the room where their ordinary uniform is kept.

- 5—Careful tracing of the origin of infection is of the greatest importance, and all persons who may have been exposed to risk must be de-loused and kept under surveillance for a period of three weeks. De-lousing a second time may be necessary in the case of heavily infested persons, after the lapse of ten days, to ensure destruction of lice hatched from eggs that have survived the first de-lousing.
- 6—In order to reduce the risk of spreading the disease, every effort must be taken to lessen the amount of louse infestation amongst the population generally. The powers of local authorities with regard to disinfection and disinfection, are dealt with in Chapter 20, *post*, p. 478 *et seq.* So far as elementary school children are concerned, the local education authority has power to direct their medical officer or person authorised by him, to examine for the presence of vermin any child at a public elementary school; and to require his parent to cleanse him, in accordance with written instructions supplied, within 24 hours: on failure of the parent to do so, to remove the child and themselves have him cleansed. The local education authority may use the cleansing station and appliances of a sanitary authority (*i*).

Local authorities have certain powers under the Scabies Order, 1941 (*k*), as to which see *post*, p. 435.

(c) **Enteric fever and dysentery.**—Where a case of enteric fever (including typhoid and paratyphoid fevers) or dysentery

(*i*) Sect. 87, Education Act, 1921; 7 Halsbury's Statutes 177.

(*k*) S.R. and O., 1941, No. 1724

(including amoebic and bacillary dysentery) occurs, Part III of the First Schedule to the Regulations of 1927 lays down the following duties :—

- 1— (i) In any case of enteric fever or dysentery occurring in his district of which the medical officer of health becomes aware, and in connection with which he is of opinion after inquiry that such a course is necessary to prevent the spread of infection, he shall report accordingly to the local authority who may by notice in writing require that, until a further notice in writing is given by them revoking the first mentioned notice on the ground that the risk of infection is removed—
 - (a) the person specified in the notice shall discontinue any occupation connected with the preparation or handling of food or drink for human consumption,
 - (b) suitable measures to be specified in the notice shall be taken with respect to cleansing, disinfection, disposal of excreta, destruction of flies, and prevention of contamination of articles of food or drink for human consumption.
 - (ii) The notice may be addressed to the head of the family to which the patient belongs, or to any person in charge of or in attendance on the patient, or to any other person in the building or place of which the patient is an inmate, or to the occupier of the building or place.
- 2— (i) If a medical officer of health has grounds for suspecting that any person in the district who is employed in any trade or business concerned with the preparation or handling of food or drink for human consumption is a carrier of enteric fever or dysentery infection, he shall report accordingly to the local authority, who may give notice in writing to the responsible manager of the trade or business concerned certifying that for the purpose of preventing the spread of the disease they consider it necessary for their medical officer of health or a medical officer acting on his behalf to make a medical examination of such suspected person, and the responsible manager and all other persons concerned shall give to the medical officer of health all reasonable assistance in the matter.
 - (ii) If from the result of any such examination, or from bacteriological or protozoological examination of material obtained at any such examination, or from any other evidence which he may deem sufficient for the purpose, the medical officer of health is of opinion that the specified person is a carrier of enteric fever or dysentery infection, the medical officer of health shall report to the local authority who may give a notice in writing to that effect to the responsible manager and to the suspected person with a view to preventing, during a period to be specified in such notice, the employment of the person to whom the notice relates in the conduct of the trade or business, or in any other trade or business concerned with the preparation or handling of food or drink for human consumption.

With a view to adequate steps being taken by local authorities, the Ministry of Health issued a Circular^(l) on "Precautions against the Spread of Alimentary Infections," in 1940. The diseases concerned, which are commonly conveyed by food, include diseases of the enteric group (typhoid and paratyphoid fevers), dysentery, food poisoning and intestinal parasitism. One of the commonest causes of the spread of enteric diseases is the contamination of food, including milk, by the hands of persons excreting the causal organisms of the disease, whether they are actually suffering from the disease, or are chronic carriers of infection, or are persons temporarily excreting the causal organisms without themselves being ill.

The Milk and Dairies Order, 1926^(m), confers powers on medical officers of health with regard to infected milk supplies (see *post*, p. 456). Article 15 of the same Order requires generally that every person engaged in the milking of cows or the distribution of milk or otherwise having access to the milk or to the churns or other receptacles, must keep his clothing and person in a cleanly condition. Article 23 of the Order requires that in connection with the milking of cows the hands of the milker must be thoroughly washed and dried before milking, and throughout the milking be kept free from contamination.

The provisions of Part III of the First Schedule to the Regulations of 1927, *supra*, detail the duties of the medical officer of health in respect of enteric fever and dysentery.

Apart from the special provisions referred to above, the Food and Drugs Act, 1938, contains requirements applicable to all persons engaged in the preparation or handling of food intended for sale. In every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered, or exposed for sale, or deposited for the purpose of sale or of preparation for sale—

- (i) cleanliness must be observed by persons employed in the room, both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing; and
- (ii) there must be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels, and clean water, both hot and cold, for the use of persons employed in the room.

These provisions do not apply in the case of food contained in containers of such materials, and so closed, as to exclude all

(l) Circular 2198, Ministry of Health, 25th November, 1940.

(m) S.R. and O., 1926, No. 821.

risk of contamination, but is not otherwise used for any purpose in connection with the preparation, storage or sale of food⁽ⁿ⁾.

The thorough washing of their hands by mixers, bakers, cooks, and all other persons engaged in the preparation and subsequent handling of food for sale, on commencing work or resuming work after an interval, and also after every act of defaecation or urination, will go far to exclude the risk of the contamination of food by organisms which cause the diseases referred to above.

In order that local authorities shall be in a position to take action without delay, general approval under section 177(1) of the Public Health Act, 1936 (see *post*, p. 450), is given to all local authorities to provide facilities for immunisation against organisms of the typhoid group, for those persons the nature of whose employment exposes them to special risk, on the understanding that the arrangements are under the general supervision of the medical officer of health^(o).

(d) **Diphtheria.**—Local authorities are empowered by the Provision, etc., of Diphtheria Antitoxin Order, 1910^(p), to provide a temporary supply of diphtheria antitoxin for the poorer inhabitants of their district (see *post*, p. 451). In January 1940, the Ministry of Health issued a Circular and Memorandum on the production of artificial immunity against diphtheria^(q), and later in the year referred to the same subject in a further Circular^(o). Local authorities were urged to make a special effort to secure the immunisation of as many children as possible, in order to meet the increased risks which inevitably arise out of war conditions. With this object in view, the Minister approved, under section 177(1) of the Public Health Act, 1936 (see *post*, p. 450), the provision of facilities for immunisation against diphtheria being made by all local authorities who had not already received his approval, on the understanding that the arrangements would be under the general supervision of the medical officer of health.

(e) **Cerebro-spinal fever.**—The Public Health (Cerebro-Spinal fever) Regulations, 1919^(r), enable any county or county borough council to provide for the examination and treatment of any person within their district who is either suffering from cerebro-spinal fever, or suspected to be so

(n) Sect. 13, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 261.

(o) Circular 2230, Ministry of Health, 7th December, 1940.

(p) S.R. and O., 1910, No. 867.

(q) Circular 1903 and Memorandum 170/Med., Ministry of Health, 26th January, 1940.

(r) S.R. and O., 1919, No. 767.

suffering, or who has been in contact with a case of that disease, and such council may provide a supply of serum and vaccine, together with the necessary apparatus for the use of the serum or vaccine. In 1940, the Ministry of Health drew attention to the encouraging results which had been obtained by chemotherapy, and accordingly they issued a short memorandum for the use of medical officers of health and medical practitioners, summarising the modern views on treatment of the disease, together with information on the epidemiology of cerebro-spinal fever, the part played by the healthy "carrier" in its spread, the control of contacts, diagnosis and the general measures of prevention. Attention was also drawn to the services of the Emergency Public Health Laboratories, set up by the Medical Research Council in collaboration with the Ministry of Health, which are available for diagnostic purposes(s).

(f) **Smallpox.**—A memorandum on the steps to be taken by sanitary authorities on the occurrence of smallpox was issued by the Ministry of Health with Circular 1724(t). It was pointed out that variola minor—the non-virulent type of the disease usually occurring in this country—was difficult to control, owing to the mildness of the disease, and the difficulty of diagnosis which resulted in missed cases. The following is a summary of the steps to be taken—

- i—case to be visited by the medical officer of health and if the diagnosis is confirmed, the patient should be removed to the isolation hospital ;
- ii—the medical officer should report the matter forthwith to the Ministry of Health by telegram (u) ;
- iii—vaccination or re-vaccination should be offered to contacts ;
- iv—contacts should be kept under medical surveillance for a period of sixteen days after the last exposure to infection ;
- v—the medical officer should at once inform the public vaccinators and vaccination officers of the name and address of every case of smallpox as it occurs ;
- vi—the infected house and its contents, together with the clothing of all persons known to have been in close contact with the patient, should be disinfected ; in variola minor a less stringent standard of disinfection may be accepted at the discretion of the medical officer ;
- vii—in order that the medical officer may visit all doubtful cases, he should notify medical practitioners of the presence of the disease in the district and invite them to inform him of any doubtful cases ;

(s) Ministry of Health Circular, 5th March, 1940.

(t) Dated 5th September, 1938 ; Memorandum 215/Med.

(u) See Article 17(7), Sanitary Officers (Outside London) Regulations, 1935, ante, p. 41.

- viii—possible confusion with chickenpox should be borne in mind, as should also the fact that this disease can be made compulsorily notifiable by the local authority on the advice of the medical officer in accordance with the procedure laid down in section 147 of the Act of 1936 (see *ante*, p. 419) ;
- ix—the medical officer should notify the medical officers of health of adjoining areas of the occurrence of smallpox in order that they may take any precautionary measures considered desirable ;
- x—in order to ascertain the source of infection, careful inquiry should be made concerning the movements of the patient during the three weeks prior to the commencement of the attack, and particularly on the 12th, 13th and 14th days prior to the onset of illness ; and
- xi—public vaccinators and medical officers can secure a gratuitous supply of lymph on application by letter, telegram or telephone to the Government Lymph Establishment, Colindale Avenue, The Hyde, London, N.W. 9.

Vaccination.—The law relating to vaccination is contained in the Vaccination Acts, 1867, 1871, 1874, 1898 and 1907(*w*), and the Vaccination Order, 1930(*x*), which are administered by the councils of counties and county boroughs(*y*). Such authorities must divide their areas into a number of vaccination districts and appoint a registered medical practitioner (called the “public vaccinator”) to carry out the work of vaccination of all persons resident in his area(*z*). A council is also required to appoint a vaccination officer to carry out the duties of registrar of vaccination(*a*). In the event of a serious outbreak of smallpox, the Ministry of Health may require a council to provide special vaccination stations in order to enable the population to be vaccinated with a minimum of delay(*b*). The Vaccination Order, 1930(*x*), details the duties of the vaccination officer and the public vaccinator.

With a view to the prevention of the spread of smallpox, the medical officer of health is empowered by the Public Health (Smallpox Prevention) Regulations, 1917(*c*), to vaccinate or re-vaccinate any person who has come into contact with the disease, and is willing to be vaccinated or re-vaccinated. No charge may be made for the service. The medical officer of health must keep proper records of any vaccinations and re-vaccinations carried out by him, together with the results thereof.

(*w*) 13 Halsbury's Statutes 609, 618, 623, 875, 910.

(*x*) S.R. and O., 1930, No. 2.

(*y*) Sect. 1, Local Government Act, 1929 ; 10 Halsbury's Statutes 883.

(*z*) Sects. 2 and 3, Vaccination Act, 1867 ; 13 Halsbury's Statutes 609.

(*a*) Sect. 5, Vaccination Act, 1871 ; 13 Halsbury's Statutes 618.

(*b*) Sect. 7, Vaccination Act, 1898 ; 13 Halsbury's Statutes 877.

(*c*) Article 1, S.R. and O., 1917, No. 146.

(g) **Food poisoning.**—A registered medical practitioner must notify the medical officer of health forthwith on becoming aware that any person he is attending is suffering from food poisoning, giving full particulars of the name, age and sex of the patient, the address of the premises where the patient is, and particulars of the food poisoning from which he is, or is suspected to be, suffering. The local authority must pay to the medical practitioner the sum of two shillings and sixpence for such notification if the case occurs in his private practice, and the fee of one shilling if it occurs in his practice as medical officer of any public body or institution(d).

If the medical officer has reasonable grounds for suspecting that any sample of food, obtained by an officer of the local authority under the provisions of the Food and Drugs Act, 1938(e), is likely to cause food poisoning, he may give notice to the person in charge of the food that, until the investigations are completed, the food or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice. If, as a result of his investigations, the medical officer is satisfied that the food in question, or any part thereof, is likely to cause food poisoning, he may deal with it in accordance with the provisions of section 10 of the Food and Drugs Act, 1938(f), but if he is satisfied that it may safely be used for human consumption, he must forthwith withdraw his notice. If a notice is withdrawn by the medical officer, or if the justice before whom any food is brought under this section refuses to condemn it, the local authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the medical officer(g).

Very full and detailed information is necessary when investigating cases of suspected food poisoning and the following particulars should be obtained.

Particulars required in connection with outbreaks of food poisoning.

- 1—Full details of all persons resident in affected household, including details of those ill and persons partaking of suspected food ;
- 2—Date and hour of partaking food in each case and date and hour when first symptoms appeared ;
- 3—Clinical character of illness ;
- 4—Full details of particular food suspected ;
- 5—Date of purchase of food and source ;
- 6—Details of any domestic preparation applied to the food ;

(d) Sect. 17, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 265.

(e) See sect. 68, *ibid.*, as to powers of sampling ; 31 Halsbury's Statutes 294.

(f) 31 Halsbury's Statutes 259.

(g) *Ibid.*, sect. 18 ; 31 Halsbury's Statutes 266.

- 7—If canned food, when opened and how stored since opening ;
- 8—Full details of conditions, etc., at the place where the food is prepared, including—
 - i—number of persons employed ;
 - ii—details of persons engaged in the preparation of the particular food suspected ;
 - iii—details of the food suspected, where obtained, date obtained, and details of preparation ;
 - iv—any evidence as to unsoundness of the food ;
 - v—possibility of contamination in the food preparing premises ;
 - vi—sanitary condition of the premises ;
 - vii—cleanliness of the premises, utensils and other apparatus used ;
 - viii—full details of the method of preparing the food ;
 - ix—health of workers engaged in the preparation and handling of the food ;
- 9—Any other information likely to indicate the source of contamination.

Wherever possible, samples of suspected foodstuffs should be obtained and submitted for bacteriological and chemical examination, including portions of food left over by patients, food in shops and food preparing premises. In addition, clinical materials from patients or suspected patients, may also require examination. Where serious outbreaks of food poisoning occur, the medical officer should notify the Minister of Health (see *ante*, p. 423).

Very full and detailed instructions were issued by the Ministry of Health in 1935(*h*), on the steps to be taken by medical officers of health in cases of suspected food poisoning.

(*h*) **Scabies.**—With a view to combating the increase in the number of cases of scabies which occurred as a result of wartime conditions such as overcrowding and difficulties of maintaining personal cleanliness, a Regulation(*i*) was added, by Order in Council, to the Defence (General) Regulations, 1939, enabling the Minister of Health to make an Order extending the powers of local authorities to deal with the disease. In accordance with this Regulation, the Minister made the Scabies Order, 1941(*j*), the provisions of which are briefly as follows :—

Where a medical officer of health is satisfied that a person is in a verminous condition, he may, by notice in writing, require the occupier of any premises in which that person is or has recently been accommodated, to permit the inspection of the premises by the medical officer or by a person duly authorised

(*h*) Memorandum 188/Med., June, 1935.

(*i*) Defence Regulation No. 33A, Defence (General) Regulations, 1939 ; S.R. and O., 1941, No. 1597.

by him in that behalf in writing. The medical officer may require any person who is or has recently been accommodated in the premises, to submit himself for medical examination, and if, upon such examination, the medical officer is satisfied that the person is verminous and requires cleansing or treatment, he may, by notice in writing, require that person to present himself for such cleansing or treatment, at such place as may be specified in the notice, and, by a further notice in writing, require the cleansing, treatment or destruction of any article specified in the notice, which is, or is likely to be, verminous by reason of having been used by, or in contact with that person. In the case of children, the parent, guardian or other person for the time being having charge of the child, is required to carry out the requirements of the notice. The occupier of premises is required to supply the medical officer with particulars of the persons who are or have recently been accommodated on the premises. The cleansing of females must be carried out only by a registered practitioner or by a woman duly authorised by the medical officer.

It is important to realise that the Order is not confined to scabies, but extends to verminous conditions generally^(k). The Ministry of Health pointed out^(l), that in order to deal with the problem of the eradication of scabies, it is essential that there should be close co-operation between those responsible for the general Public Health Services, the School Medical Services, and the Child Welfare Services. With this object in view, further suggestions were made by the Ministry^(m), regarding the degree of collaboration between county and county district councils. As a general rule, it is considered that the onus for initial action should rest on the district council and their medical officer, who should be responsible for securing the requisite inspections; cleansing and treatment of persons affected (up to the point at which, in a small proportion of cases, admission to hospital for in-patient treatment may be necessary); and cleansing, treatment, or destruction of verminous articles. In order to avoid duplication of services, however, use should be made of any existing facilities, *e.g.* cleansing and treatment of children, already provided by the county council. The assistance of the county council is desirable in connection with the

(k) The term "verminous" is not defined in the Order. For the purposes of the Public Health Act, 1936, the term "vermin" "in its application to insects and parasites, includes their eggs, larvae and pupae, and the expression 'verminous' shall be construed accordingly."—Public Health Act, 1936, sect. 90(1); 29 Halsbury's Statutes 392.

(l) Circular 2517; 14th November, 1941.

(m) Circular 2645, Ministry of Health, 14th May, 1942.

provision of treatment centres (short of in-patient hospital treatment). Existing cleansing centres should be used for the widest possible area and civil defence first aid posts may be utilised subject to reasonable precautions being taken to avoid infection of civil defence personnel. Where in-patient hospital treatment is necessary, the responsibility for providing it will largely rest on the county council, but the number of cases needing such treatment is not likely to be large.

PROVISIONS FOR PREVENTING THE SPREAD OF INFECTION.

With a view to preventing the spread of infection, numerous provisions have been included in the Act of 1936, dealing with the following matters :—

- (a) Exposure of infected persons and articles ;
- (b) Exclusion of children from school ;
- (c) Restriction on sending infected articles to laundries, etc. ;
- (d) Prohibition of homework ;
- (e) Sale or exchange of articles by rag and bone dealers ;
- (f) Library books ;
- (g) Infectious matter in dustbins ;
- (h) Letting of houses ;
- (i) Use of public conveyances ;
- (k) Disposal of dead bodies ;
- (l) Disinfection ;
- (m) Removal of patients to hospital ; and
- (n) Provision of medicine and nursing attention.

(a) **Exposure of infected persons and articles.**—Section 148 of the Act of 1936, *infra*, imposes a penalty upon the exposure of infected persons or articles, but it should be noted that an offence is only committed if the exposure is knowingly done.

Section 148, Public Health Act, 1936.—Penalty on exposure of persons and articles.

A person who—

- (a) knowing that he is suffering from a notifiable disease, exposes other persons to the risk of infection by his presence or conduct in any street, public place, place of entertainment or assembly, club, hotel, inn or shop ;
- (b) having the care of a person whom he knows to be suffering from a notifiable disease, causes or permits that person to expose other persons to the risk of infection by his presence or conduct in any such place as aforesaid ; or
- (c) gives, lends, sells, transmits or exposes, without previous disinfection, any clothing, bedding or rags which he knows to have been exposed to infection from any such disease, or

any other article which he knows to have been so exposed and which is liable to carry such infection,

shall be liable to a fine not exceeding five pounds :

Provided that a person shall not incur any liability under this section by transmitting with proper precautions any article for the purpose of having it disinfected.

In a case⁽ⁿ⁾ where the medical practitioner ordered a patient suffering from scarlet fever to walk in the middle of the road and talk to none, it was held that proper precautions had been taken. If any person, *knowing* that he is suffering from a notifiable disease, engages in or carries on any trade, business or occupation which he cannot engage in or carry on without risk of spreading the disease, he is liable to a penalty not exceeding five pounds^(o).

(b) **Exclusion of children from school.**—A penalty is imposed by section 150 of the Act of 1936, *infra*, upon any person having charge of a child, who permits such child to attend school after receiving a notice from the medical officer of health that it must not do so.

Section 150, Public Health Act, 1936.—Child liable to convey notifiable disease may be ordered not to attend school.

- (1) A person having the care of a child who is, or has been, suffering from or has been exposed to infection of, a notifiable disease, shall not, after receiving notice from the medical officer of health of the district that the child is not to be sent to school, permit the child to attend school until he has obtained from the medical officer of health a certificate, for which no charge shall be made, that in his opinion the child may attend school without undue risk of communicating the disease to others.
- (2) A person who contravenes the provisions of this section shall be liable to a fine not exceeding five pounds.

As a general rule, the medical officer of health, in addition to notifying the parent or person in charge of the child or children to be excluded from school, usually notifies the head teachers of the schools the children attend.

Section 151 of the Act of 1936, *post*, p. 439, enables the medical officer of health to obtain from the head teacher of a school, complete lists of scholars attending the school. By this means proper supervision of contacts can be exercised and, if necessary, inquiries made at their homes with a view to finding further cases which may have been overlooked.

⁽ⁿ⁾ *Tunbridge Wells Local Board v. Bisshopp* (1877), 2 C.P.D. 1877 ; 38 Digest 200, 362.

^(o) Sect. 149, Public Health Act, 1936 ; 29 Halsbury's Statutes 432.

Section 151, Public Health Act, 1936.—Local authority may require list of day-scholars at school where notifiable disease exists.

- (1) The principal of a school in which any scholar is suffering from a notifiable disease shall, if required by the medical officer of health of the district, furnish to him within a reasonable time fixed by him a complete list of the names and addresses of the scholars, not being boarders, in or attending the school, or any specified department of the school.
- (2) The local authority shall pay to the principal of a school for every list furnished by him under this section the sum of sixpence, and, if the list contains more than twenty-five names, a further sum of sixpence for every twenty-five names (including the first twenty-five names) contained in the list.
- (3) If the principal of a school fails to comply with the provisions of this section, he shall be liable to a fine not exceeding five pounds.
- (4) In this section the expression " the principal " means the person in charge of a school, and includes, where the school is divided into departments, and no one person is in charge of the whole school, the head of any department.

Rules for the exclusion of children from school upon the occurrence of a case of infectious disease, are usually adopted by local education committees, being based on the recommendations of the Ministry of Health and the Board of Education(*p*). Table XX, which appears in the appendix to the recommendations, summarises the exclusion periods for the commoner infectious diseases.

(*p*) "Memorandum on Closing of and Exclusion from School," issued jointly by the Ministry of Health and the Board of Education, 1927. H.M.S.O.

TABLE XX.

Incubation and Exclusion Periods of the Commoner Infectious Diseases.

Disease.	Incubation period.	Interval between onset of illness and appearance of rash.	Period of exclusion.	
			Patients.	Contacts.
Scarlet fever	1 to 8 days	1 to 2 days	Two weeks after return from hospital, or, in the case of patients treated at home, two weeks after release from isolation.	One week after removal of patient to hospital, or, in the case of patients at home, one week after release from isolation.
Diphtheria	2 to 10 days	—	Two to three weeks after end of attack; or until pronounced free from infection by a medical practitioner	Two weeks after removal of patient to hospital, or, in the case of patients treated at home, ten days after release from isolation. Negative swabs should be obtained
Measles	7 to 14 days	4 days	Three weeks from date of appearance of rash	Infants, and other children who have not had the disease, three weeks from date of onset of last case in house
German measles	5 to 21 days	0 to 2 days	One week from date of appearance of rash	Infants and other children who have not had the disease, three weeks from date of last exposure to patient with rash
Whooping-cough	6 to 18 days	—	Six weeks from commencement of cough	Infants only, for six weeks from date of onset of last case or three weeks from date of last exposure to infection
Mumps	12 to 23 days	—	Until one week after subsidence of swelling	No exclusion
Chicken pox	11 to 21 days	0 to 2 days	Three weeks, or until all scabs have disappeared	Infants, and other children who have not had the disease, three weeks from date of last exposure to infection
Small pox	10 to 14 but usually 12 days	3 days	Six weeks, or until the patient is certified free from infection by a medical practitioner	Sixteen days, unless recently vaccinated, when exclusion is unnecessary.

The Code of Regulations for Public Elementary Schools, 1926(a), enables a sanitary authority, or any two members thereof acting on the advice of the medical officer of health, to close a school or exclude children on account of infectious disease. Similarly, the local education committee may take the same action on the advice of the school medical officer, and also because of uncleanness(b).

(c) **Restriction on sending infected articles to laundries, etc.**

—Section 152 of the Act of 1936, *infra*, prohibits the sending of articles to a laundry, public washhouse or for purposes of cleaning, if they have been exposed to infection, unless they have been properly disinfected or are sent with proper precautions to a laundry for the purpose of disinfection.

Section 152, Public Health Act, 1936.—Restrictions on sending or taking infected articles to laundry or public washhouse, or to cleaners.

- (1) A person shall not send or take to any laundry or public washhouse for the purpose of being washed, or to any place for the purpose of being cleaned, any article which he knows to have been exposed to infection from a notifiable disease, unless that article has been disinfected by, or to the satisfaction of, the medical officer of health of the district or some other registered medical practitioner, or is sent with proper precautions to a laundry for the purpose of disinfection, with notice that it has been exposed to infection.
- (2) The local authority may pay the expenses of the disinfection of any such article as aforesaid if carried out by them or under their direction.
- (3) The occupier of any building in which a person is suffering from a notifiable disease shall, if required by the local authority, furnish to them the address of any laundry, washhouse or other place to which articles from the house have been, or will be, sent during the continuance of the disease for the purpose of being washed or cleaned.
- (4) A person who contravenes, or fails to comply with, any provision of this section shall be liable to a fine not exceeding five pounds.

(d) **Prohibition of homework.**—A local authority are empowered by section 153 of the Act of 1936 (see *ante*, p. 341) to prohibit homework (see *ante*, p. 337), being carried on in any premises where a case of notifiable disease occurs. This section applies to the making, cleaning, washing, altering, ornamenting, finishing or repairing of wearing apparel, and any work incidental thereto, and to such other classes of work as may from time to time be specified by order of the Minister of Health, but so far the Minister has not made any order under this section.

(e) **Sale or exchange of articles by rag and bone dealers.** Section 154 of the Act of 1936 (see *ante*, p. 267), prohibits the sale or exchange of any article whatsoever by a rag and bone dealer to a person under the age of fourteen years, or any article of food or drink to any person irrespective of age.

(f) **Library books.**—Where a case of notifiable disease occurs, library books may not be obtained from or be returned to, the library. In accordance with section 155 of the Act of 1936, *infra*, the local authority or county council must be notified and the book must be disinfected prior to return to the library, or be destroyed.

Section 155, Public Health Act, 1936.—Provisions as to library books.

- (1) A person who knows that he is suffering from a notifiable disease shall not take any book, or cause any book to be taken for his use, or use any book taken, from any public or circulating library.
- (2) A person shall not permit any book which has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from a notifiable disease.
- (3) A person shall not return to any public or circulating library a book which he knows to have been exposed to infection from a notifiable disease, or permit any such book which is under his control to be so returned, but shall give notice to the local authority, or, in the case of a library provided by a county council, to that council that the book has been so exposed to infection.
- (4) A person who contravenes any of the foregoing provisions of this section shall be liable to a fine not exceeding five pounds.
- (5) A local authority, or, as the case may be, a county council on receiving such a notice as aforesaid shall cause the book to be disinfected and returned to the library, or shall cause it to be destroyed.

In some districts, the medical officer of health forwards to the librarian the name and address of every case of infectious disease, in order that no books are issued until the risk of spreading infection has ceased.

(g) **Infectious rubbish in dustbins.**—It is an offence under section 156 of the Act of 1936 (see *ante*, p. 182), to place in a dustbin or ashpit, any matter known to have been exposed to infection from a case of notifiable disease, unless such matter has been properly disinfected.

The local authority must give notice of the provisions of section 156, *supra*, to the occupier of every house where they know a case of notifiable disease exists. Notice must also be given of the provisions of section 158 of the Act of

(h) **Letting of houses.**—Section 157 of the Act of 1936, *infra*, imposes a penalty upon any person who gives false information with regard to the occurrence of infectious disease in a house, or who lets such a house without proper disinfection having been carried out, or, being an hotel keeper, lets a room used by a person suffering from a notifiable disease to another person without first having it properly disinfected.

Section 157, Public Health Act, 1936.—Provisions as to the letting of houses, or rooms in hotels, after recent case of notifiable disease.

(1) If any person who—

(a) is concerned in the letting of a house or part of a house, or in showing a house or part of a house with a view to its being let; or

(b) has recently ceased to occupy a house or part of a house, is questioned by any person negotiating for the hire of the house, or any part thereof, as to whether there is, or has been within the preceding six weeks, in any part of the house a person suffering from a notifiable disease, and knowingly makes a false answer to that question, he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding one month.

(2) A person who lets any house or part of a house in which a person has to his knowledge, been suffering from a notifiable disease without having the house, or the part of the house, and all articles therein liable to retain infection, disinfected to the satisfaction of the medical officer of health of the district or of some other registered medical practitioner, as testified by a certificate signed by him, shall be liable to a fine not exceeding twenty pounds.

(3) The keeper of an hotel or inn who allows a room therein in which any person has to his knowledge been suffering from a notifiable disease to be occupied by any other person before the room and all articles therein liable to retain infection have been disinfected to the satisfaction of the medical officer of health of the district or of some other registered medical practitioner, as testified by a certificate signed by him, shall be liable to a fine not exceeding twenty pounds.

There is an implied warranty upon letting a furnished house that the premises are fit for human habitation and it was held that a breach of the warranty had occurred when the house had been occupied by a person suffering from pulmonary tuberculosis(c). The expression "inn" referred to in sub-section (3), *supra*, has been defined as a "house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with lodgings, and whatsoever they reasonably desire for themselves and their horses while on their way"(d).

(c) *Collins v. Hopkins*, [1923] 2 K.B. 617; 31 Digest 179, 3125.

(d) *Binn's Justice*, Vol. 1, p. 64.

A penalty is also imposed by section 158 of the Act of 1936, *infra*, upon any person who ceases to occupy a house or part of a house wherein a case of notifiable disease has occurred within the past six weeks, without proper disinfection being carried out, or adequate notice being given to the landlord.

Section 158, Public Health Act, 1936.—Persons ceasing to occupy house to disclose to owner any recent case of notifiable disease, and to disinfect.

- (1) If a person ceases to occupy a house or part of a house in which to his knowledge a person has within six weeks previously been suffering from a notifiable disease and either—

- (a) fails to have the house, or the part of the house, and all articles therein liable to retain infection, disinfected to the satisfaction of the medical officer of health of the district or some other registered medical practitioner, as testified by a certificate signed by him ; or
- (b) fails to give to the owner of the house, or the part of the house, notice of the previous existence of the disease ; or
- (c) on being questioned by the owner as to whether within the preceding six weeks there has been therein any person suffering from any notifiable disease, makes a false answer to such question,

he shall be liable, in the case of an offence under paragraph (a) or paragraph (b) of this subsection, to a fine not exceeding twenty pounds and, in the case of an offence under paragraph (c), to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding one month.

- (2) The local authority shall give notice of the provisions of this section to the occupier and also to the owner of any house in which they are aware that there is a person suffering from a notifiable disease.

It will be observed that subsection (2), *supra*, requires the local authority to give notice of the provisions of the section to the occupier and owner of every house in which a case of notifiable disease occurs.

(i) **Use of public conveyances.**—In order to prevent the spread of infection by the use of public conveyances by persons suffering from a notifiable disease, duties are imposed upon passengers and users, and also upon owners, drivers and conductors of such vehicles. Section 159 of the Act of 1936, *post*, p. 445, imposes a penalty upon any person who, knowing that he is suffering from a notifiable disease, enters a public conveyance, such as an omnibus, where separate fares are charged. Similarly, if such a person enters any other public conveyance without first notifying the owner or driver, an offence is committed.

Section 159, Public Health Act, 1936.—Provisions as to use of public conveyances by persons suffering from notifiable disease.

- (1) No person who knows that he is suffering from a notifiable disease shall—
 - (a) enter any public conveyance used for the conveyance of persons at separate fares; or
 - (b) enter any other public conveyance without previously notifying the owner or driver thereof that he is so suffering.
- (2) No person having the care of a person whom he knows to be suffering from a notifiable disease shall permit that person to be carried—
 - (a) in any public conveyance used for the conveyance of persons at separate fares; or
 - (b) in any other public conveyance without previously informing the owner or driver thereof that that person is so suffering.
- (3) A person who contravenes any provision of this section shall be liable to a fine not exceeding five pounds and, in addition to any fine imposed, shall be ordered by the court to pay to any person concerned with the conveyance as owner, driver or conductor thereof a sum sufficient to cover any loss and expense incurred by him in connection with the disinfection of the conveyance under the provisions in that behalf contained in the next succeeding section.

Section 160 of the Act of 1936, *infra*, prohibits the owner, driver or conductor of an omnibus where separate fares are charged, from conveying any person whom he knows to be suffering from a notifiable disease. The owner or driver of any other public conveyance may refuse to take such a person but if he does do so, he must notify the medical officer of health of the district and cause the vehicle to be disinfected. When asked to do so, the local authority must undertake the disinfection of public conveyances which have been exposed to infection.

Section 160, Public Health Act, 1936.—Duty of owner, etc., of public conveyance in regard to cases of notifiable disease.

- (1) The owner, driver or conductor of a public conveyance used for the conveyance of passengers at separate fares, shall not convey therein a person whom he knows to be suffering from a notifiable disease.
- (2) The owner or driver of any other public conveyance may refuse to convey therein any person suffering from a notifiable disease until he has been paid a sum sufficient to cover any loss and expense which will be incurred by reason of the provisions of the next succeeding subsection.
- (3) If a person suffering from a notifiable disease is conveyed in a public conveyance, the person in charge thereof shall, as soon as practicable, give notice to the medical officer of health of the district in which the conveyance is usually kept, and, before permitting any other person to enter the conveyance, shall cause it to be disinfected, and any person concerned with the

in a summary manner from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient sum to cover any loss and expense incurred by him.

- (4) A person who contravenes any of the foregoing provisions of this section shall be liable to a fine not exceeding five pounds.
- (5) The local authority, when so requested by the person in charge of a public conveyance in which a person suffering from a notifiable disease has been conveyed, shall provide for its disinfection, and shall make no charge in respect thereof except in a case where the owner, driver or conductor conveyed a person knowing that he was suffering from a notifiable disease.

(k) **Disposal of dead bodies.**—Rules with regard to the disposal of dead bodies are contained in sections 161 to 165 of the Act of 1936, which are considered in detail in chapter 13 (see *ante*, p. 303). Section 165 prohibits the holding of a wake over the body of a person who has died of a notifiable disease.

(l) **Disinfection.**—An important part of the duties of local authorities with regard to notifiable diseases, is the work of disinfection of infected articles and premises. Section 166 of the Act of 1936 enables a local authority to provide a disinfecting station and section 167 empowers them to disinfect premises and to disinfect or destroy infected articles, upon the certificate of the medical officer of health. These sections are discussed in detail in chapter 20 (see *post*, p. 478).

(m) **Removal of infected patients to hospital.**—A justice of the peace is empowered by section 169 of the Act of 1936, *infra*, to order the removal to hospital of any person suffering from a notifiable disease, if his circumstances are such that proper precautions cannot or are not being taken, and that serious risk of infection is caused to other persons. It should be noted that the previous consent of the hospital or institution must be obtained, and the cost of removal and maintenance must be borne by the local authority.

Section 169, Public Health Act, 1936.—Provision for removal to hospital of persons suffering from notifiable disease where serious risk of infection being spread.

- (1) Where a justice of the peace (acting, if he deems it necessary, *ex parte*) is satisfied, on the application of the local authority, that a person is suffering from a notifiable disease and—
 - (a) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken; and
 - (b) that serious risk of infection is thereby caused to other persons; and
 - (c) that accommodation for him is available in a suitable hospital or institution,

the justice may, with the consent of the superintending body of the hospital or institution, order him to be removed thereto

- (2) An order under this section may be addressed to such officer of the local authority as the justice may think expedient, and that officer and any officer of the hospital or institution may do all acts necessary for giving effect to the order.

It was held in a case under the repealed section 124 of the Public Health Act, 1875(*e*), that where a child suffering from scarlet fever was lodged in the parlour of a four-roomed house, the other three rooms being used by the other members of the family, there was evidence to justify an order for his removal to hospital(*f*). It is important to note that an order of the magistrate *must* be obtained before the removal takes place and in two cases in Scotland(*g*), damages were obtained from the local authority where orders from a justice had not been secured, even though in one case the parent's consent to the removal had been given. Where an order has been properly issued by a justice, the court are not entitled to consider its validity in a case of obstruction(*h*).

A local authority are empowered by section 168 of the Act of 1936 (see *post*, p. 480) to provide temporary shelters or house accommodation for persons, where they deem it necessary to remove such persons from premises requiring disinfection after a case of infectious disease. Where the person or guardian (in the case of a child) does not consent to go to a temporary shelter or house provided by the local authority, a justice may by order require him to do so. The cost of removal and maintenance must be borne by the local authority.

Section 170 of the Act of 1936, *infra*, empowers a justice to order the retention in hospital of a person who is suffering from a notifiable disease, when he is satisfied that such person has no proper lodging or accommodation to go to. It would appear that subsection (4) enables the appropriate officer to detain the person in hospital by force if necessary.

Section 170, Public Health Act, 1936.—Power of justice to order detention in hospital of infected person without proper lodging to return to.

- (1) Where a justice of the peace acting (if he deems it necessary, *ex parte*) in and for the place in which a hospital for infectious diseases is situate is satisfied, on the application of any local authority, that an inmate of the hospital who is suffering from a notifiable disease would not, on leaving the hospital, be provided

(*e*) 13 Halsbury's Statutes 675.

(*f*) *Warwick v. Graham*, [1899] 2 Q.B. 191; 38 Digest 201, 366.

(*g*) *Mitchell v. Aberdeen* (Magistrates of) (1893), 20 Ct. of Sess. Cas. (4th Ser.) 253.

Sutherland v. Aberdeen (Magistrates of) (1894), 22 Ct. of Sess. Cas. (4th Ser.) 95.

(*h*) *Booker v. Taylor* (1882), *Times*, 21st November.

with lodging or accommodation in which proper precautions could be taken to prevent the spread of the disease by him, the justice may order him to be detained in the hospital at the cost of the authority :

Provided that the making of such an order shall not affect the liability of any council who by virtue of any contract or order, or otherwise, are under an obligation to defray the cost of his maintenance whilst in the hospital.

- (2) An order made under the preceding subsection may direct detention for a period specified in the order, but any justice of the peace acting in and for the same place may extend a period so specified as often as it appears to him to be necessary so to do.
- (3) Any person who leaves a hospital contrary to an order made under this section for his detention therein shall be liable to a fine not exceeding five pounds, and the court may order him to be taken back to the hospital.
- (4) An order under this section may be addressed, in the case of an order for a person's detention, to such officer of the hospital and, in the case of an order made under the last preceding subsection, to such officer of the local authority on whose application the order for detention was made, as the justice may think expedient, and that officer and any officer of the hospital may do all acts necessary for giving effect to the order.

It will be observed that the cost of maintenance of a person in hospital must be borne by the authority applying for his detention therein but the proviso to subsection (1) makes it clear that this does not affect any contract existing between two local authorities whereby one authority accept in their hospital, patients from the district of the other authority. In such a case, the application for the detention of the patient may be made either by the authority in whose area the patient resides or by the authority in whose hospital he is an inmate but the cost of maintenance will be governed by the agreement existing between the two authorities.

Where a person suffering from pulmonary tuberculosis is in an infectious condition, a county council or local authority may apply to a court of summary jurisdiction for an order requiring his removal and detention in hospital for a period not exceeding three months, subject to compliance with the procedure laid down in section 172 of the Act of 1936, *infra*.

Section 172, Public Health Act, 1936.—Removal to hospital of infectious persons suffering from tuberculosis of the respiratory tract.

- (1) Where a court of summary jurisdiction is satisfied, on the application of a county council or local authority, that a person suffering from tuberculosis of the respiratory tract (in this section referred to as "the patient") is in an infectious state, and—
 - (a) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken ; and

- (b) that serious risk of infection is thereby caused to other persons; and
- (c) that accommodation for him is available in a suitable hospital or institution,
- the court may, with the consent of the superintending body of the hospital or institution, order him to be removed thereto and to be detained and maintained therein for such period not exceeding three months as the court thinks fit.
- (2) Where, before the expiration of any period for which a patient has been ordered to be detained under this section, a court of summary jurisdiction acting for the same petty sessional division or place is satisfied, upon the application of the county council or local authority, that the conditions which led to his detention being ordered will again exist if he is not detained for a further period, the court may, subject to the like consent, order his detention for a further period, not exceeding three months.
- (3) Before making an application for an order under this section, the county council or local authority shall give to the patient, or to some person having the care of him, not less than three clear days' notice of the time and place at which the application will be made.
- (4) On the hearing of any application under this section, the court may, if it thinks necessary so to do, require the patient to be examined by such registered medical practitioner as it may direct.
- (5) The county council or local authority on whose application an order has been made under this section shall, if so directed by the court—
- (i) pay the whole, or such part as the court may direct, of the cost of the patient's removal to and maintenance in the hospital or institution;
- (ii) make towards the maintenance of any of his dependants such contribution as the court may direct;
- and, in the absence of any direction by the court, may pay the whole or such part, if any, as they think fit of the said cost and make such contribution, if any, as they think fit.
- (6) At any time after the expiration of six weeks from the date of an order made under subsection (1) of this section, application for the rescission of that order, if it is still in force, or of any further order made under subsection (2) of this section, may, upon not less than three clear days' notice to the county council or local authority concerned, be made to a court of summary jurisdiction acting for the same petty sessional division or place, and upon the hearing of any such application the court may rescind the order.
- (7) An order under this section may be addressed to such officer of the county council or local authority as the court may think expedient, and that officer and any officer of the hospital or institution may do all acts necessary for giving effect to the order.

Recovery of expenses of maintenance of patients in hospital.—Where a patient is treated in hospital for an *infectious disease*, the local authority may recover from him or from his estate any expenses incurred in his maintenance.

his maintenance, or where they consider it reasonable to do so, may recover a portion of such expenses, in accordance with the provisions of section 184 of the Act of 1936, *infra*.

Section 184, Public Health Act, 1936.—Recovery of expenses of maintenance in certain institutions.

- (1) In the case of a patient who has become an inmate of an institution for the purpose of receiving treatment for an infectious disease, a county council or local authority may, and in the case of any other patient maintained by them in an institution shall, recover from the patient, or from any person legally liable to maintain him, or from the patient's estate, if he has died, any expenses incurred by the council or authority in providing for his maintenance in the institution, not being expenses recoverable from any other source, or, if the council or authority are satisfied that the persons from whom the expenses are under this subsection recoverable cannot reasonably, having regard to their financial circumstances, be required to pay the whole of those expenses, such part, if any, of the expenses as those persons are in the opinion of the council or authority able to pay: Provided that any such council or authority may, by agreement with the governing body of any association or fund established for the purpose of providing benefits to members or other beneficiaries thereof, accept from the association or fund, in respect of the expenses incurred by the council or authority in the maintenance of any member or beneficiary of the association or fund, payment of such sums as may be provided by the agreement in lieu of recovering the whole or any part of the said expenses from, or from the estate of, the member or beneficiary, or from any person legally liable to maintain him.
- (2) For the purposes of this section—
 - (a) the expression "institution" means any hospital, maternity home or other residential institution wherein accommodation is provided by a county council or local authority under this Act; and
 - (b) the expenses incurred by a county council or local authority in providing for the maintenance of a patient in an institution shall, in respect of each day of maintenance therein, be taken to be a sum representing the average daily cost per patient of the maintenance of the institution and the staff thereof and the maintenance and treatment of the patients therein, and may include a reasonable charge for the patient's removal to or from the institution.
- (3) Expenses recoverable under this section may be recovered as a civil debt, either summarily or otherwise, in proceedings commenced within twelve months from the date of the patient's discharge from the institution or, if he dies in the institution, from the date of his death.
- (4) Nothing in this section affects the provisions of this Act relating to the removal to hospital of infectious persons suffering from tuberculosis of the respiratory tract.
- (n) **Provision of medical and nursing attention.**—A local authority are empowered by section 177 of the Act of 1936(i),

to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district, subject to the approval of the Minister of Health. They may also provide nurses for attendance on patients suffering from any infectious disease, where suitable accommodation is not available or removal to hospital is likely to endanger the patient's health. They may make charges for the services of nurses so provided. It is under this section that local authorities have been empowered by the Minister, by general order, to supply free of charge diphtheria antitoxin and various other sera (see *ante*, p. 431).

INFECTIOUS DISEASES AT SPECIAL PREMISES.

In addition to the general provisions of the Public Health Act relating to the notification, treatment and prevention of infectious disease, detailed in the preceding pages of this chapter, special precautions and steps have to be taken in dealing with infectious diseases at the undermentioned premises, *viz.* :—

- | | |
|------------------------------|-------------------------------------|
| (a) Lodging houses ; | (f) Dairies, cowsheds & milkshops ; |
| (b) Canal boats ; | (g) Ice-cream premises ; |
| (c) Ships ; | (h) Slaughterhouses & meat shops ; |
| (d) Tents, vans, and sheds ; | (i) Aircraft. |
| (e) Factories ; | |

(a) **Lodging houses.**—Part IX of the Act of 1936 contains special provisions relative to infectious diseases at common lodging-houses. The keeper of a common lodging-house is required to give immediate notice to the medical officer of health upon the occurrence of a case of *infectious* disease. The medical officer of health may be empowered by a justice to enter a common lodging-house and examine any person therein, and a local authority may order the removal to hospital of any person in a common lodging-house found to be suffering from a *notifiable* disease. A court of summary jurisdiction may order a common lodging-house to be closed on account of infectious disease but the local authority must pay compensation to the keeper if he is not himself in default. Full details as to the above provisions will be found in chapter 18 (see *ante*, p. 403).

(b) **Canal boats.**—Section 254 of the Act of 1936, and the Canal Boats Regulations, contain provisions relating to cases of infectious disease occurring on canal boats. Details of these provisions will be found in chapter 16 (see *ante*, p. 372). The powers contained in Part V of the Act of 1936, relative to infectious diseases, are applied to canal boats by

(c) **Ships.**—Section 267 of the Act of 1936 (see *ante*, p. 83), applies the provisions of Part V of the Act, relative to infectious diseases, to ships, as if a ship were a house, building or premises, and the master or other officer in charge of the vessel, the occupier.

In addition to the foregoing provisions, the Minister of Health is authorised by section 143 of the Act of 1936(*k*), to make regulations with respect to infectious diseases, including certain matters connected with ships (see *ante*, p. 417).

Under the corresponding provisions in the repealed section 1 of the Public Health Act, 1896(*l*), the Minister made the Port Sanitary Regulations, 1933(*m*). These Regulations laid down the procedure for dealing with cases of infectious disease at ports and are of particular importance to port health authorities(*n*). The following is a summary of the more important articles in the Regulations.

Article 2 defines the following terms:—

“*sanitary authority*” means a port sanitary authority and the council of every borough or urban or rural district whose area includes or abuts on waters which are part of a customs port but are not within the jurisdiction of a port sanitary authority;

“*district*” means the district of a sanitary authority and in the case of a sanitary authority other than a port sanitary authority includes the waters of any customs port abutting on any part of their district so far as such waters are not within the district of a port sanitary authority;

“*ship*” includes a vessel or boat;

“*foreign-going ship*” means a ship employed in trading or going between some place or places in Great Britain and Northern Ireland and some place or places situate beyond the following limits, that is to say, the coasts of Great Britain and Ireland, the Channel Islands, the Isle of Man or the Continent of Europe between the River Elbe and Brest inclusive;

“*infected*” in relation to a ship arriving in a district means a ship—

- (a) which has on board a case of plague, cholera or yellow fever; or
- (b) on which a person developed plague more than six days after embarkation and which has not since been subjected to the prescribed measures; or
- (c) on which plague-infected rats are found; or
- (d) which has had on board a case of cholera within five days prior to arrival and which has not since been subjected to the prescribed measures; or
- (e) which had on board a case of yellow fever at the time of departure from a port, or which has had such a case on board during the voyage and which has not since the last case occurred been subjected to the prescribed measures.

“*suspected*” in relation to a ship arriving in a district means a ship—

- (a) on which a person developed plague within six days after embarkation and which has not since been subjected to the prescribed measures; or

(*k*) 29 Halsbury's Statutes 427.

(*l*) 13 Halsbury's Statutes 871.

(*m*) S.R. and O., 1933, No. 38.

(*n*) The term “port sanitary authority” is superseded by “port health

- (b) on which there has been an unusual mortality among rats the cause whereof is undetermined ; or
- (c) which had on board a case of cholera at the time of departure from a port or during the voyage but on which no fresh case has occurred within five days prior to arrival and which has not since the last case occurred been subjected to the prescribed measures ; or
- (d) arriving from a port or seaboard included by reason of yellow fever in the list of infected ports and seabords kept by the medical officer in pursuant to Article 11 of the Regulations or from a port or seaboard in close relation with an endemic centre of yellow fever after a voyage of less than six days or after a longer voyage if there is reason to believe that the ship may be carrying adult mosquitoes emanating from the said port or seaboard ;

Provided that for the purpose of the definitions of " infected " and " suspected " a case presenting the clinical features of cholera shall be deemed to be a case of cholera until two bacteriological examinations made with an interval of not less than 24 hours between them have not revealed the presence of cholera or other suspicious vibrios.

Article 4 provides that the regulations shall be enforced by port health authorities, as respects port health districts, and by borough or district councils, as respects waters not within the district of a port health authority.

Article 6 requires the master of a foreign-going vessel when approaching certain ports nominated by the Minister of Health, to transmit by wireless (where such is installed) to the medical officer of health, notice of any case or suspected case of infectious disease (other than tuberculosis) or if the attention of the medical officer is otherwise required. Such notification must be sent not less than four hours or more than twelve hours before the expected time of the arrival of the boat at the port. Where wireless is not available. *Article 7* provides that a message must be sent in advance if possible and if not, immediately upon arrival. Masters of ships are required by *Article 9* to indicate the state of health on board when arriving at a port, by flying appropriate signals showing either an absence of disease or the presence or suspected presence, of infectious disease within the past five days. At night the signals must be given by means of lights.

Article 13 requires the master of a foreign-going ship to fill in and sign a declaration of health in the prescribed form, including information as to the occurrence of plague, cholera, yellow fever, typhus fever or smallpox, any unusual mortality among rats, and generally as to definite or suspected infectious disease and deaths from any cause. The statutory declaration must be countersigned by the ship's surgeon (if any).

Article 10 requires an authority to provide mooring stations, with the concurrence of the customs officer and the harbour master, so that ships may be moored out of contact with the shore or other vessels.

Article 11 requires the medical officer of health to supply to pilots and customs officers at his port, lists showing the foreign ports and seabords which are known or suspected to be infected with plague (human or rodent), cholera, yellow fever, typhus fever or smallpox. Such information is obtained by the medical officer of health from the confidential returns of the Ministry of Health, " Weekly Record of Infectious Disease at Ports, etc., at Home and Abroad."

Article 12 requires the master of a vessel to take it to an established mooring station, unless the medical officer of health otherwise allows, if

- (1) it is infected or suspected or has a case of typhus fever or small-

- (2) if it has had a case or suspected case of plague, cholera, yellow fever, typhus fever or smallpox during the previous six weeks ; or
- (3) if plague has been found or suspected in rats or mice ; or
- (4) if there has been sickness or mortality among rats or mice not due to rat destruction measures.

Where the medical officer of health has reason to believe that any of the above conditions exist on a ship, he may order the ship to proceed to a mooring station. A ship remains subject to control until it has been examined by the medical officer of health, and the measures prescribed in the Fourth Schedule have been carried out.

Article 14 empowers a customs officer to order a ship to proceed to a mooring station and be detained there, where he learns from a declaration of health or otherwise that a person has died during the past six weeks from a suspected infectious disease, or that the vessel comes from an infected port, or that plague, or sickness or death not due to measures taken for the destruction of rats or mice, has occurred on the ship. The medical officer of health may also order the detention of a ship for medical examination and he may by writing instruct the customs officer to do so. Immediately the ship has been examined by the medical officer of health or in any case at the expiration of 12 hours, the detention ceases, but *Article 15* enables the medical officer of health to extend the period.

Article 16 prohibits any person, other than a pilot, customs officer, immigration officer or an officer of the authority, without permission, from leaving a vessel from a foreign port, until it is free from control. Before disembarkation, the medical officer of health may require from any person the address of his destination and any other necessary particulars, so that he may communicate with the local authority concerned. If, within a specified time, not exceeding 14 days, a person leaves an address, he must notify the port medical officer.

The medical officer of health is required by *Article 17* to inspect on arrival every ship from an infected port or seaboard and also from a foreign port on which there has been during the voyage a case or suspected case of plague, cholera, yellow fever, typhus fever, smallpox, or rodent plague. If the ship has gone to a mooring station, the medical officer must carry out his examination within twelve hours or as soon as possible thereafter. If the ship is detained on account of the occurrence or suspected occurrence of rodent plague, the medical officer must take steps to prevent the passage of rats off the ship.

Article 18 enables a medical officer of health to order the removal of a ship from its berth to a mooring station.

Articles 19 to 21 deal with the deratisation of ship. Where a vessel is without a valid deratisation or deratisation exemption certificate, it must be inspected by the officer of the port health authority to ascertain the state of rat infestation. Where necessary appropriate deratisation measures must be carried out. If not necessary, or after completion of deratisation, the medical officer of health must issue the appropriate certificate. An owner of a ship, or the master acting on his behalf, may by writing request the medical officer to inspect the ship and having done so, the medical officer must either issue an exemption certificate or order deratisation to be carried out.

Article 22 empowers the medical officer of health to examine any person proposing to embark upon a ship in his port, if he suspects such

or smallpox, and if the disease is confirmed, embarkation may be prohibited. Where smallpox exists in any part of Great Britain, the medical officer may prohibit any unprotected person from that part embarking upon a ship going beyond the British Isles.

Article 23 enables the Minister of Health to declare by notice in the London Gazette, that any district is infected with plague, cholera, or yellow fever, or that typhus fever or smallpox exists there in an epidemic form, and in such cases, the special provisions in Articles 24 to 27 apply.

Article 24 empowers the medical officer of health to examine any person on board or about to embark on a ship, and he must do so within 12 hours upon receipt of a request from the master. Similarly, the medical officer may, on request from the master must, examine any clothing or bedding of such person or a member of the crew, and may require its disinfection or destruction. The medical officer may also require any part of the ship to be disinfected. Bedding, clothing or any other article, which, in the opinion of the medical officer or other officer, is capable of carrying infection, may not be taken on board a ship unless it has been disinfected.

If plague is present in any part of the district, *Article 25* requires the medical officer of health to take appropriate steps to secure the deratisation of ships and to require the master of any ship to take the necessary precautions to prevent the access of rats from the shore to the ship.

Article 26 deals with cholera. If such disease is present in a district, the medical officer may require all tanks and filters used for drinking water on the ship to be emptied, cleansed and disinfected, and refilled with wholesome water. The medical officer may also prohibit the taking of foodstuffs, either generally or specified articles, on board any ship, and he may require the bilges and any water used as ballast to be disinfected.

Article 27 enables the medical officer to require any person on board or proposing to embark on, a ship, to be deloused, if typhus fever exists in an epidemic form in any part of a district.

Article 29 empowers an officer of an authority to board a ship in his district, at any time, and he may cause a ship to be brought to a safe place for boarding. *Article 30* requires the medical officer of health to examine any case or suspected case of infectious disease on board a ship and any verminous person; to detain such person either on board or at an appointed place ashore; to cause such person and his belongings to be disinfected; to prevent his disembarkation or permit it only subject to special conditions; and also requires the master of a vessel to assist in all the measures for preventing the spread of infectious disease. *Article 31* enables the medical officer of health to order the removal to hospital of any case of infectious disease, not too ill to be moved, without an order from a justice or the local authority.

Article 32 requires the master of a ship to answer all questions put to him by customs or sanitary officers, as to the health of the ship. He must assist the authority and give information, particularly in regard to infectious diseases, and the presence of sickness or disease among rats or mice. *Article 33* imposes a similar duty upon any person to whom the regulations apply and a person under surveillance must submit to examination at the direction of the medical officer of health of the district where he happens to be.

(d) **Tents, Vans and Sheds.**—Section 268 of the Act of 1936 applies the provisions of Part V, relatives to infectious diseases, to any tent, van, shed or similar structure, as if such tent, etc., were a house or a building used for human habitation, so that the general provisions detailed in the present chapter, apply in the case of these erections. Full details as to tents, vans and sheds will be found in chapter 17 (see *ante*, p. 389).

(e) **Factories.**—Where a case of notifiable disease occurs, a local authority may prohibit premises being used for home work(o). Full details as to outworkers and home work will be found in chapter 14 (see *ante*, p. 337 *et seq.*).

(f) **Dairies, cowsheds and milkshops.**—Owing to the ease with which infectious disease may be spread through the agency of milk, local authorities have powers to prevent the spread of infection in this way.

(i)—*Power to prohibit supply of milk.*—Powers with regard to the prohibition of the supply of milk in certain cases are contained in the Food and Drugs Act, 1938(p); section 68 authorises the taking of samples(q); and section 25 and Part I of Schedule I(r) prohibits the sale of tuberculous milk or milk of cows suffering from certain diseases (see *post*, p. 457).

Article 18 of the Milk and Dairies Order, 1926, *infra*(s), empowers the medical officer of health to stop the supply of milk from any dairy when he is in possession of evidence that infectious disease is caused by the consumption of milk from that dairy. It will be observed that the notice prohibiting the supply of milk is operative for a period of twenty-four hours only, subject to renewal by the medical officer, but it must be remembered that the medical officer may take action without reference to the local authority.

Article 18, Milk and Dairies Order, 1926.

- (1) Where the medical officer of health of a sanitary district is in possession of evidence that any person is suffering from infectious disease caused by the consumption of milk supplied within the district from any registered premises or that the milk at any registered premises within the district has been infected with such disease, he may by notice in writing to the occupier of such premises specifying such evidence require, if the premises are within the district, that no milk from such premises (or, if the notice so provides, no milk received at such premises from any

such specified source) shall be sold for human consumption or used in the manufacture of products for human consumption, or, if the premises are without the district, that no such milk shall be sold for human consumption within the district.

- (2) Any such notice shall operate for such period not exceeding twenty-four hours as may be specified therein from the time of the receipt of the notice but may be renewed for a further period or periods of twenty-four hours. The notice shall forthwith be withdrawn as soon as the medical officer of health is satisfied that the milk is no longer likely to cause infectious disease.
- (3) Where the medical officer of health serves such a notice he shall forthwith report the matter to the sanitary authority, and if the premises are within the district he shall forthwith endeavour to ascertain the causes of the infectious condition of the milk.
- (4) Where the milk in respect of which a notice is given under this Article is obtained from any registered premises without the district, the medical officer of health shall forthwith send a copy of the notice to the medical officer of health of the sanitary district from which the milk is obtained.
- (5) No person shall sell milk for human consumption or use milk or sell milk for use in the manufacture of products for human consumption contrary to the terms of a notice given by the medical officer of health under this Article.
- (6) Where any person sustains any damage or loss by reason of a notice issued under this Article he shall be entitled to full compensation from the sanitary authority in case it shall appear that no infectious disease was in fact caused by the consumption of milk from the premises to whose occupier the notice was addressed or as the case may be that no milk at such premises had been infected with such disease. Any dispute as to the right to or the amount of such compensation shall be settled by arbitration in the same manner as provided by the Public Health Act, 1875, and any sum awarded as compensation shall be recoverable as a civil debt: Provided that if the compensation claimed does not exceed twenty pounds it may at the option of either party instead of being settled as hereinbefore provided be settled by and recoverable before a court of summary jurisdiction.

(ii)—*Prohibition of the sale of milk in certain cases.*—Section 25 of the Food and Drugs Act, 1938(*t*), prohibits the sale, for human consumption or for use in the manufacture of products for human consumption, of—

tuberculous milk ; or
milk from animals suffering from—
tuberculosis of the udder ;
emaciation due to tuberculosis ;
acute mastitis ;
actinomycosis of the udder ;

suppuration of the udder ;
any comatose condition ;
any septic condition of the uterus ; or
any infection of the udder or teats which is likely to convey
disease.
anthrax ;
foot and mouth disease ;

(iii)—*Infectious diseases on dairy premises.*—Article 17 of the Milk and Dairies Order, 1926(*u*), *infra*, requires notification to be given to the medical officer of health upon the occurrence of a case of infectious disease on dairy premises. If the medical officer becomes aware of a case of infectious disease in the person of a dairy worker, he must notify the dairyman concerned and, if the dairy is outside his district, the local authority in whose area the dairy is situated.

Article 17, Milk and Dairies Order, 1926.

- (1) Every person having access to the milk or to the churns or other milk receptacles in or about any registered premises, as soon as he becomes aware that any member of his household is suffering from any infectious disease, shall immediately notify the occupier of such premises of the fact and the occupier shall immediately notify the medical officer of health of the district in which the premises are situate unless notification has already been given to that officer.
- (2) Where the medical officer of health of any sanitary district becomes aware that any such person is suffering from an infectious disease or has recently been in contact with a person so suffering he shall forthwith notify the occupier of such premises of the fact, and where the council of such sanitary district are not the registering authority for the locality in which the premises are situate he shall also notify the medical officer of health of the registering authority.

Where necessary, the medical officer of health may examine any person on dairy premises and in accordance with Article 19, *infra*, he may prohibit the employment of such person in the milking of cows, handling milk vessels, or in any way taking part in the production, distribution or storage of milk.

Article 19, Milk and Dairies Order, 1926.

- (1) Where the medical officer of health of the registering authority by reason of such notification or otherwise suspects that any of the persons in or about any registered premises who have access to the milk or to the churns or other milk receptacles is suffering from an infectious disease or has recently been in contact with any person so suffering or is in such a condition that there is a danger of his transmitting an infectious disease he may give notice to the occupier of such premises that he con-

- siders it necessary to make an examination of any or all of such persons and where he gives such notice, the said occupier and every person concerned shall give to the medical officer of health all reasonable facilities for making such examination.
- (2) Where from the result of any such examination or otherwise the medical officer of health is of opinion that the employment of any such person is likely to lead to the spread of infectious disease, the medical officer of health may give notice in writing to that effect to the occupier of the registered premises and to the person concerned requiring that, during a period to be specified in such notice, the person to whom the notice relates shall not milk cows or handle vessels used for containing milk or in any way take part in the production, distribution or storage of milk.
 - (3) A person to whom any such notice relates and any other person who is suffering from an infectious disease or has recently been in contact with a person so suffering shall not milk cows or handle vessels used for containing milk or in any way take part in the production, distribution or storage of milk until the expiry of the period mentioned in the notice or, as the case may be, until all danger of the communication of infectious disease by means of the milk has ceased.
 - (4) No cowkeeper or dairyman shall allow any person to whom any such notice relates, or any other person who is so suffering or has recently been in contact as aforesaid, to milk cows or handle vessels used for containing milk or in any way to take part in the production, distribution or storage of milk, until the expiry of the period mentioned in the notice or, as the case may be, until all danger of the communication of infectious disease by means of the milk has ceased.

The Public Health (Prevention of Tuberculosis) Regulations, 1925(*w*), prohibit any person who knows he is suffering from tuberculosis of the respiratory tract from entering upon any employment or occupation in connection with a dairy which would involve the milking of cows, the treatment of milk, or the handling of vessels used for containing milk. A local authority may, by notice, prohibit any person from continuing in any such employment as is mentioned above, upon written report of the medical officer of health that such person is suffering from tuberculosis of the respiratory tract and is in an infectious condition. The notice, which must be in the prescribed form, must state the date, not being less than seven days, on or before which the employment must be discontinued. If the person is aggrieved by the action of the local authority, he may appeal to a court of summary jurisdiction and must notify his intention to appeal to the clerk of the local authority, stating the grounds thereof. If the person concerned in any action taken under the Regulations is not himself in default, he is entitled to compensation for

any damage he sustains, payable in accordance with the provisions of the Act of 1936(*x*).

The procedure detailed in the preceding paragraphs relative to the prevention of the spread of infectious disease through the agency of milk, is somewhat involved and in practice it is not often necessary to put it into operation. In the case of ordinary infectious diseases (excluding tuberculosis), it is usually sufficient if the infected person is immediately removed from all contact with the milk or milk vessels, and the latter thoroughly cleansed and sterilised. It may be necessary in addition to subject the milk to pasteurisation before permitting it to be used for human consumption. In some cases, the milk may be prohibited for use for human consumption but the dairyman may be allowed to obtain supplies from an alternative and approved source. With regard to tuberculosis, it is only rarely that the power of stopping the milk supply is put into operation. As a general rule, when a sample of milk is found to contain living tubercle bacilli, the particulars are forwarded to the medical officer of health of the county or county borough in whose area the cows are situated, and arrangements are made for the cows to be examined by a veterinary surgeon. If any cows are found to be definitely affected with tuberculosis and to come within the scope of the Tuberculosis Order, 1938(*y*), they are slaughtered at once, compensation being payable in accordance with the extent of the disease(*z*). If no definite cases of tuberculosis are discovered but there are some suspected cases, these are usually isolated from the rest of the herd, the milk not being used for human consumption. During the period of isolation (which may be legally enforced up to a period of six weeks(*a*)), samples of milk should be examined bacteriologically.

With regard to the liability of a dairyman in respect of the sale of milk containing specific organisms, see *Square v. Model Farm Dairies (Bournemouth), Ltd.*(*b*). In this case, milk containing typhoid organisms was supplied to a householder and all the inmates of the house, with the exception of the householder himself, contracted typhoid fever with consequent pecuniary loss to the householder. There was no negligence on the part of the dairyman, his employees or the person from whom he obtained the milk; the presence of the organisms could not

(*x*) Sect. 278; and see *ante*, p. 82.

(*y*) S.R. and O., 1938, No. 165.

(*z*) Where the disease is extensive, one-quarter the valuation of the animal is paid; where not extensive, three-quarters.

(*a*) Tuberculosis Order, 1938; S.R. and O., 1938, No. 165.

have been known to any of these persons. It was held, however, that a contravention of section 2, Food and Drugs (Adulteration) Act, 1928(c), had occurred, the dairyman having sold to the prejudice of the purchaser an article of food not of the nature or substance or quality of the article demanded.

(g) **Ice-cream premises.**—Any person who manufactures ice-cream must, on the occurrence of any milk-borne disease among persons living or working on the premises, give notice to the medical officer of health, who may prohibit the use of any ice-cream for human consumption until further notice. If upon further investigation the medical officer is satisfied that the ice-cream may be used for human consumption, he must withdraw the notice, but if he is not so satisfied, he must have the ice-cream destroyed. The owner of the ice-cream is entitled to compensation for the loss of ice-cream provided it was not likely to cause milk-borne disease(d). The term "milk-borne" disease means enteric fever (including typhoid and paratyphoid fevers), dysentery, diphtheria, scarlet fever, acute inflammation of the throat, gastro-enteritis, undulant fever, and any other disease which the Minister of Health may by order declare to be a milk-borne disease for the purposes of these provisions(e).

(h) **Slaughterhouses and meat shops.**—Article 6 of the Public Health (Meat) Regulations, 1924(f), prohibits any person who is for the time being suffering from a notifiable disease from taking part in the slaughtering of animals for human consumption or the handling of meat.

Article 13 of the same Regulations prohibits the blowing or inflation with the breath, or in any other manner likely to cause infection or contamination, of any carcass or part of the carcass of any animal slaughtered for human consumption.

(i) **Aircraft.**—Section 143 of the Act of 1936 (see *ante*, p. 417), enables the Minister of Health to make regulations, with regard, *inter alia*, to the prevention of the spread of infection from aircraft. The regulations, which may only be made by the Minister after consultation with the Secretary of State, may provide for the signals to be displayed by aircraft having on board any case of epidemic, endemic or infectious disease; the questions to be answered by pilots

(c) 8 Halsbury's Statutes 885; see now sect. 3, Food and Drugs Act, 1938; 31 Halsbury's Statutes 254.

(d) Sect. 37, Food and Drugs Act, 1938; 31 Halsbury's Statutes 277.

(e) *Ibid.*, sect. 37(5) and Sched. I, Part II; *ibid.*, 278.

(f) S.R. and O. 1924 No. 1439.

and other persons on board aircraft; the detention of aircraft and of persons on board; and the duties to be performed by pilots and other persons on board the aircraft.

The following is a summary of the more important provisions of the Regulations(g) made by the Minister in 1938 :—

Regulation 2 defines the following terms—

“ *responsible authority* ” means—

- (a) as respects an aerodrome maintained by a local authority including a county council the maintaining authority ;
- (b) as respects any aerodrome or place in a port health district other than such an aerodrome as aforesaid the port health authority for such district ;
- (c) as respects any other aerodrome or other place the local authority for the district in which such aerodrome or place is situated, that is to say the common council of the city of London or the council of a metropolitan borough, municipal borough, or urban or rural district as the case may be ;

“ *aerodrome* ” includes a place for the landing of aircraft on water ;

“ *placed under surveillance* ” means that a person is required to submit to medical examination with a view to establishing his state of health ;

“ *crew* ” includes any person having duties on board an aircraft in connection with the flying or the safety of the flight of the aircraft or employed on board in any way in the service of the aircraft, the passengers, or the cargo ;

“ *commander* ” includes any person for the time being in charge of or in command of an aircraft ;

“ *customs aerodrome* ” means an aerodrome for the time being approved by the Secretary of State as a customs aerodrome for the purposes of the Acts relating to Customs ;

“ *sanitary aerodrome* ” means a customs aerodrome which has been recognised by the Minister in accordance with the provisions of paragraph (4) of this regulation (see *infra*) ;

“ *medical officer* ” means the medical officer of health of a responsible authority or a registered medical practitioner acting under the direction of such an authority, whether in place of or as an assistant to the medical officer of health or otherwise, for the purpose of executing the regulations or any of them ;

“ *prescribed measures* ” in relation to plague, cholera, typhus fever or smallpox in England and Wales means such of the measures set out in the schedule to the regulations (see *post*, p. 464) as are appropriate, and in relation to yellow fever in England and Wales or plague, cholera, yellow fever, typhus fever or smallpox outside England and Wales, means such measures prescribed or permitted by the Convention (see *post*, p. 464) as are appropriate ;

“ *infected* ” in relation to an aircraft arriving at an aerodrome or other place means an aircraft which has on board a case of plague, yellow fever, typhus fever or smallpox or a case presenting clinical signs of cholera, or which has had such a case on board and has not since been subjected to the prescribed measures ;

" *aircraft coming from an infected locality* " in relation to an aircraft arriving at an aerodrome means an aircraft—

- (a) which left within the preceding six days a locality infected with plague ; or
- (b) which left within the preceding five days a locality infected with cholera ; or
- (c) which left within the preceding twelve days a locality where typhus fever is epidemic ; or
- (d) which left within the preceding fourteen days a locality where smallpox is epidemic ; or
- (e) arriving from a locality included by reason of yellow fever in the list kept by the medical officer of the district in which the aerodrome is situated pursuant to regulation 4, or from a locality in close relation with an endemic centre of yellow fever after a voyage of less than six days or after a longer voyage if there is reason to believe that the aircraft may be carrying adult mosquitoes emanating from the said locality ;

" *infectious disease* " means any epidemic or acute infectious disease but does not include venereal disease.

The Minister on being satisfied that there are available at a customs aerodrome—

- (a) an organised medical service with a medical officer and at least one assistant officer acting under his direction (see *post*, p. 468) ;
- (b) a place for medical inspection ;
- (c) either a laboratory for the examination of suspected material or equipment for taking and despatching such material for examination in a laboratory ;
- (d) facilities for the isolation, transport and care of the sick, for the isolation of contacts separately from the sick and for carrying out any other prophylactic measure in suitable premises either within the aerodrome or in proximity to it ;
- (e) the apparatus necessary for carrying out disinfection, disinsecting, deratisation and any other measures prescribed by the regulations ;
- (f) a sufficient supply of wholesome drinking water ; and
- (g) a proper and safe system for the disposal of excreta and refuse, and for the removal of waste water ;

and that the aerodrome is as far as possible protected from rats, may recognise such aerodrome as being for the time being a *sanitary aerodrome*. Such recognition remains operative until withdrawn by the Minister.

Regulation 3 requires every responsible authority through the medical officer and any other officers appointed for the purpose, to execute the provisions of the regulations. Where an aerodrome is situated within the areas of more than one authority, such authorities may by agreement, approved by the Minister, arrange that one of the authorities shall be responsible for the enforcement of the regulations and the appointment of officers.

Regulation 4 requires the medical officer to maintain and keep up to date a list showing the localities both in the United Kingdom

plague (human and rodent), cholera or yellow fever, or in which typhus fever or smallpox is believed to be epidemic, and he must supply a copy of such list to the customs officers employed at the aerodrome and to the person in charge thereof. The medical officer must utilise such information as may be sent to him by the Minister in the preparation and maintenance of the list. The Minister has arranged to supply to medical officers of districts comprising a customs aerodrome a copy of the "Weekly Record of Infectious Diseases at Ports, etc., at Home and Abroad" (in a modified form) which has hitherto been sent each week to the Medical Officers of Health of Port Health Districts (*h*).

Regulation 5 requires the commander of an aircraft arriving from a foreign place to notify the customs officer or medical officer (whichever visits the aircraft first after its arrival), of any death on board otherwise than as a result of an accident, or any case or suspected case of infectious disease, if he has not already done so by wireless or otherwise.

Regulation 6 requires the person in charge of an aerodrome, upon receipt of information that a person on board an aircraft approaching or arriving at an aerodrome has symptoms which may be indicative of infectious disease other than tuberculosis, or that there are circumstances requiring the attention of the medical officer, to forthwith notify that officer and the customs officer.

Regulation 7 requires the appropriate measures, as set out in the schedule, to be taken in respect of an infected aircraft, or an aircraft coming from an infected locality, or, in the case of yellow fever, to such of the measures prescribed or permitted in relation to that disease by the convention as the medical officer considers necessary. Such an aircraft remains subject to control under the regulations until it has been examined by the medical officer and the necessary measures required thereby have been completed. The provisions of the *Schedule* are as follows—

Part A—Plague.

1—Infected aircraft.

1—The aircraft must be inspected and the passengers and crew medically examined.

2—The sick must immediately be disembarked and isolated.

3—All other persons must be placed under surveillance or, in exceptional circumstances, isolated, for a period expiring not later than six days after the date of arrival of the aircraft at the aerodrome.

The following further measures must be carried out at a *sanitary aerodrome*—

4—Used bedding, soiled linen, wearing apparel and other articles which, in the opinion of the medical officer, are infected, must be cleansed of vermin and, if necessary, disinfected, and merchandise proposed to be discharged may, if it is considered liable to harbour rats or fleas, be subjected to such measures as the medical officer thinks fit.

5—The parts of the aircraft which have been occupied by the persons suffering from plague, or which the medical officer con-

siders to be infected must be cleansed of vermin, and, if necessary, disinfected.

6—The medical officer may in exceptional cases require the aircraft to be deratised if there is reason to suspect the presence of rats on board and if the operation was not carried out at the aerodrome of departure.

2—*Aircraft coming from an infected locality.*

1—The passengers and crew may be medically examined.

2—Any such persons may be placed under surveillance, or, in exceptional circumstances, isolated for a period of not more than six days after the date on which the aircraft left the infected locality.

The following further measures may be carried out at a *sanitary aerodrome*—

3—The medical officer may in exceptional circumstances require the aircraft to be cleansed of vermin and to be deratised if these operations were not carried out at the aerodrome of departure.

4—Merchandise proposed to be discharged from the aircraft may, if the medical officer considers it liable to harbour rats or fleas, be subjected to such measures as he thinks fit.

Part B—Cholera.

1—*Infected aircraft.*

1—The aircraft must be inspected and the passengers and crew medically examined.

2—The sick must immediately be disembarked and isolated.

3—All other persons must be placed under surveillance or isolated for a period up to five days from the date of arrival of the aircraft. A person who satisfies the medical officer that he has been vaccinated for cholera within the preceding six months, excluding the last six days thereof, shall not be isolated.

4—The medical officer may prohibit the unloading from the aircraft of fresh fish, shellfish, fruit and vegetables.

The following further measures must be carried out at a *sanitary aerodrome*—

5—Used bedding, soiled linen, wearing apparel and other articles which, in the opinion of the medical officer, are infected must be disinfected.

6—The parts of the aircraft occupied by persons infected with cholera or which the medical officer considers to be infected, must be disinfected.

7—If the medical officer suspects the water, it must be disinfected and if practicable emptied out and replaced, after disinfection of the container, by a supply of wholesome drinking water.

2—*Aircraft coming from an infected locality.*

1—The passengers and crew may be medically examined.

2—Any such persons may be placed under surveillance, or, in exceptional circumstances, isolated for a period up to five days after the aircraft left the infected locality, provided that a person who satisfies the medical officer that he has been vaccin-

ated for cholera within the preceding six months, excluding the last six days thereof, need not be isolated.

3—The unloading from the aircraft of fresh fish, shellfish, fruit and vegetables may be prohibited.

Part C—Typhus Fever.

1—*Infected aircraft.*

1—The passengers and crew must be medically examined.

2—The sick must immediately be disembarked, isolated and deloused.

3—Any other person reasonably suspected to have been exposed to infection may be placed under surveillance, or, in exceptional circumstances, isolated for a period of not more than twelve days after the date on which he was deloused.

The following further measures must be carried out at a *sanitary aerodrome*—

4—Any person reasonably suspected of harbouring lice must be deloused.

5—Used bedding, linen, wearing apparel and any other article which the medical officer considers to be infected must be disinfected.

6—The parts of the aircraft occupied by the infected persons, or which the medical officer considers to be infected, must be disinfected.

2—*Aircraft coming from an infected locality.*

The passengers and crew may be placed under surveillance, or, in exceptional circumstances, isolated for a period up to twelve days from the date on which they left a locality where typhus fever is epidemic.

Part D—Smallpox.

1—*Infected aircraft.*

1—The passengers and crew must be medically examined.

2—The sick must immediately be disembarked and isolated.

3—Any other person reasonably suspected by the medical officer to have been exposed to infection must be offered vaccination, and must be placed under surveillance, or, in exceptional circumstances, isolated for a period up to fourteen days after the date of arrival of the aircraft. A person need not be placed under surveillance or isolated if after vaccination he shows local signs of early reaction attesting an adequate immunity, or if he satisfies the medical officer that he has been vaccinated within a period of three years, excluding the last twelve days thereof, or that he has had a previous attack of smallpox.

The following further measures must be carried out at a *sanitary aerodrome*—

4—Used bedding, soiled linen, wearing apparel and any other article which the medical officer considers to have been recently infected must be disinfected.

5—The parts of the aircraft occupied by the infected persons, or which the medical officer considers to be infected, must be disinfected.

2—*Aircraft coming from an infected locality.*

The passengers and crew, except any person satisfying the medical officer in accordance with paragraph 3, *supra* (relating to vaccination, etc.), may be placed under surveillance, or, in exceptional circumstances, isolated for a period up to fourteen days from the date on which they left a locality where smallpox is epidemic.

Regulation 8 requires the customs officer to detain the aircraft, passengers and crew, and to report the matter forthwith to the person in charge of the aerodrome and to the medical officer, if it appears to him that—

- (a) during the voyage there has been on the aircraft a death otherwise than as a result of accident, or a case of illness caused or suspected to be caused by disease of an infectious nature; or
- (b) the aircraft has come from or has called at a locality included in the list referred to in *Regulation 4, supra* (see p. 463, *ante*); or
- (c) during the voyage death not attributable to poison or other measures for destruction has occurred amongst rats or mice on the aircraft.

The medical officer may require a person so detained to state his name and intended destination and address, and to give any other information which the medical officer may think necessary for transmission to the local authority of the district within which the intended place of destination of the person is situated.

If a person is either unable to give his destination address or for some reason arrives at a different destination within a period not exceeding fourteen days after landing, he must report particulars of his actual place of arrival and his address to the medical officer of the area in which he left the aircraft.

The medical officer may order the detention of an aircraft arriving from a foreign place.

Regulation 9 provides that the detention of an aircraft by a customs officer shall cease as soon as the medical officer has duly inspected the aircraft, or has given notice to the customs officer that he does not propose to do so, or, if the inspection has not been begun within three hours after the customs officer gave the direction for its detention, on the expiration of that period, but these provisions do not affect the powers of detention of the medical officer himself.

Regulation 10 requires the medical officer to inspect any aircraft which has come from or called at a foreign place which is included in the list prepared in pursuance of *Regulation 4* (see p. 463, *ante*), and any aircraft which has come from or called at a foreign place and on which there has occurred during the voyage any case of illness which was or may have been plague, cholera, yellow fever, typhus fever or smallpox, or on which rodent plague has occurred or been suspected during the voyage. The medical officer must also inspect any aircraft within three hours after receiving a notice of detention from a customs officer, or give notice to that officer that he does not intend to inspect it. If the aircraft is liable to be subjected to further measures under the regulations, the medical officer must give notice to the commander directing that the aircraft shall be detained for a further period.

Regulation 11 enables the medical officer to examine any person

from plague, cholera, yellow fever, typhus fever or smallpox, and he may prohibit any person suffering from one of those diseases embarking on an aircraft. He may also prohibit the embarkation of a person who has been in contact with a person suffering from one of those diseases. The medical officer may prohibit a person from embarking on an aircraft going beyond Great Britain, Ireland, the Channel Islands and the Isle of Man, if he comes from any part of Great Britain where severe smallpox (*variola major*) exists if he has been in contact with any person suffering from the disease so as to render him liable to transmit infection, provided that this restriction does not apply to a person who has been vaccinated within a period of three years excluding the last twelve days thereof, or who has had a previous attack of smallpox, or who shows local signs of early reaction attesting an adequate immunity.

Regulation 12 contains provisions relating to localities infected with plague, cholera or yellow fever, or where typhus fever or smallpox exist therein in an epidemic form—

- (a) the medical officer may, and within three hours after receiving a request from the commander to do so, must, medically examine any person who proposes to embark on or is on board an aircraft ;
- (b) the medical officer or other authorised officer of the responsible authority may, on receipt of a similar request, must, inspect any clothing, bedding or other article of personal use which belongs to or is in use or is intended for use by the passengers or crew, which may have been exposed to infection, and the medical officer may require the disinfection or destruction of any such article ;
- (c) the medical officer or other officer may require any part of an aircraft to be cleansed and disinfected ;
- (d) a person may not take on board an aircraft any such article which in the opinion of the medical officer or other officer is capable of carrying infection, unless that officer is satisfied that it has been efficiently disinfected ;
- (e) if the locality is infected with plague, the medical officer may and if directed by the Minister must, take steps to secure the deratisation of any aircraft on which he has reason to believe that there are rats ; and
- (f) if typhus fever exists in epidemic form, the medical officer may require any person who proposes to embark on or is on board an aircraft and who in his opinion is likely to convey infection, and any article thereon, to be deloused.

Regulation 14 empowers a responsible authority to appoint properly qualified medical practitioners to assist the medical officer of health in the exercise of his functions under the regulations, and to appoint for a sanitary aerodrome one or more assistant officers to act under the direction of the medical officer in the execution of the regulations (see *post*, p. 469). Such authority may provide in connection with a *customs aerodrome*, premises and waiting rooms for medical inspections and examinations ; means of transport ; premises for temporary isolation ; and hospital accommodation ; and at a *sanitary aerodrome*, apparatus for cleaning, disinfection and disinfecting of aircraft, persons and clothing and other articles, and the

Regulations 15 to 20 detail the powers and duties of medical officers. In addition to his duties in connection with the examination of suspected infectious persons, etc., referred to in previous regulations, the medical officer must enter in the journey log-book of an aircraft under the heading "Observations," if the aircraft leaves the aerodrome within a period of fifteen days from the date on which he becomes aware of the appearance in the United Kingdom of plague, cholera, or yellow fever, or of typhus fever or smallpox in an epidemic form, a statement as to such appearance; and a statement as to any person embarking on or continuing his voyage in the aircraft who in his opinion should be placed under surveillance. The commander must also record in a similar manner in the log-book under the same heading a statement of any facts relevant to public health which have arisen on the aircraft during its voyage and a statement of any sanitary measures prescribed or permitted by the Convention which have been applied to the aircraft before the commencement of or during the course of the voyage. Upon releasing an aircraft from detention, the medical officer must give a written notice to the customs officer, to the commander of the aircraft and to the person in charge of the aerodrome, that the aircraft is free to proceed at or after a date and time stated in the notice.

The duties of the commander of an aircraft are detailed in *Regulation 21*. Every person subjected to any of the regulations is required by *Regulation 22* to comply therewith. *Regulations 23 to 25* deal with the charges to be made for services rendered by the responsible authority or their officers, and *Regulation 26* contains a saving for mails conveyed under the authority of the Postmaster-General or of the postal administration of any other Government. *Regulation 27* provides that in the case of an aircraft landing at an aerodrome which is not its final destination, the commander may notify the medical officer of that fact, and thereupon the provisions of the regulations do not apply, except in the case of yellow fever when the medical officer may require the carrying out of the measures prescribed or permitted by the Convention in relation to that disease as he considers necessary. In such cases, the commander may not land goods or disembark passengers except subject to such conditions as the medical officer may impose in conformity with the provisions of article 57 of the Convention.

The Regulations have been made in conformity with the International Sanitary Convention for Aerial Navigation which was signed at The Hague on the 12th April, 1933. The authorities responsible for the execution of the Regulations may be a county council (only as respects an aerodrome maintained by them), a port health authority, or a local authority (see *ante*, p. 462).

The practical difference between a customs and a sanitary aerodrome is that in the latter arrangements have been made for carrying out all the sanitary measures laid down in the 1933 Convention. The arrangements for the medical examination of persons arriving or departing from aerodromes is the same in both types of aerodrome.

the responsible authority for a sanitary aerodrome is required to appoint at least one assistant officer, who is usually a sanitary inspector. His duties will include the inspecting of aircraft in certain circumstances, and the carrying out or supervision of the work of disinfection, deratisation, etc.

Subsection (4) of section 143 of the Act of 1936 (see *ante*, p. 418) gives a right of entry to premises or aircraft for the officers concerned in the enforcement of the Regulations. The medical officer of health and sanitary inspector need not be provided with a special written authority for the purposes of these Regulations, but any other officer should be specially authorised in writing (see *ante*, p. 417).

Regulation 21(2) is of importance to all local authorities, whether or not their districts contain an aerodrome, and is designed to meet the case of forced landings. The commander of an infected aircraft or an aircraft coming from a locality infected with plague, cholera or yellow fever, or locality where typhus fever or smallpox is epidemic, making a forced landing, must notify the local authority, the customs officer or a police officer, comply with the instructions of the authority or officer, and, if possible, proceed to a sanitary aerodrome. Precise details of procedure have not been laid down as the Ministry of Health consider that the circumstances of each case would vary so much that it would not be practicable to lay down rules applicable to all such cases. It should be noted that where an aeroplane is unable to proceed to a sanitary aerodrome, the local authority, customs officer or police officer may require each person (passengers and crew) to state their names and intended destinations(*i*).

TUBERCULOSIS.

It is the duty of county and county borough councils to make adequate arrangements for the treatment of cases of tuberculosis, at or in dispensaries, sanatoria and other institutions approved by the Minister of Health(*k*), and in addition, such authorities may make such arrangements as they think fit for the treatment of tuberculosis(*l*).

Where necessary a court of summary jurisdiction may order the removal to, and detention in, an institution of any person suffering from pulmonary tuberculosis who is in an infectious condition(*m*).

(i) See Circular 1677, Ministry of Health, 22nd April, 1938.

(k) Sect. 171, Public Health Act, 1936; 29 Halsbury's Statutes 443.

(l) *Ibid*, sect. 173; 29 Halsbury's Statutes 444.

(m) *Ibid* sect. 179, *ante*, p. 446.

The Minister of Health is empowered by section 175 of the Act of 1936⁽ⁿ⁾ to set up an advisory committee to assist county and county borough councils in making arrangements for the treatment of persons suffering from tuberculosis who are masters, seamen, or apprentices in or to the sea service or the sea-fishing service.

Section 180 of the Act of 1936 (see *ante*, p. 35) empowers the Minister of Health to prescribe by regulations the qualifications of medical officers of health and health visitors appointed in connection with any scheme for the treatment of tuberculosis.

Under the Public Health (Tuberculosis) Regulations, 1940^(o), the medical officer is required to send a return to the Ministry of Labour and National Service (in the case of county district councils the return is sent to the county medical officer in the first instance, who forwards it to the Ministry), giving particulars of male persons born in the years specified whose names appear in the register kept by the medical officer in accordance with the provisions of the Public Health (Tuberculosis) Regulations, 1930^(p). The form of return is prescribed in the Schedule to the Regulations. All the information received in pursuance of the Regulations must be regarded by every person who has access to it as confidential.

The above Regulations apply to men only, but in 1942 similar Regulations^(q) were made with respect to women, necessitating the same action by the medical officer of health.

CANCER.

Cancer is not a disease which is notifiable to local authorities. Certain forms^(r) of cancer are, however, notifiable to the Chief Inspector of Factories at the Home Office, in accordance with the provisions of section 66, Factories Act, 1937^(s), and the Regulations made in pursuance of section 73, Factory and Workshop Act, 1901^(t), which was replaced by section 66 of the Act of 1937, *supra*.

Under the Cancer Act, 1939^(u), it is the duty of every

(n) 29 Halsbury's Statutes 445.

(o) P.R. & O., 1940.

(p) S.R. and O., 1930, No. 572; article 10 (5) (i) (iii).

(q) Public Health (Tuberculosis) Regulations, 1942. P.R. & O., 19th May, 1942; and see Ministry of Health Circular 2648, 22nd May, 1942.

(r) Epitheliomatous ulceration due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances; and chrome ulceration, *i.e.* ulceration due to chromic acid or bichromate of potassium, sodium or ammonium or any preparation of these substances—Home Office (Factory and Workshop) Order, 1919, S.R. and O., 1919, No. 1775.

(s) 30 Halsbury's Statutes 247.

(t) 8 Halsbury's Statutes 554.

county and county borough council to make arrangements to secure that the facilities for the treatment of persons suffering from cancer are adequate for the needs of their area. Such authorities were required to submit their arrangements for the approval of the Minister of Health before 29th March, 1940, or such longer period as the Minister may in any case allow. The schemes must be prepared in consultation with representatives of the staffs of hospitals and local medical practitioners in the area, and must include arrangements for facilitating diagnosis, treatment in hospitals, payment of travelling expenses of patients and other consequential matters(*x*).

Owing to the heavy pressure of special work which had to be undertaken by local authorities at the outbreak of the war, the Minister of Health extended the period for the submission of their arrangements under the Act, from the 29th March, 1940, to the 31st March, 1941(*y*), to the 31st March, 1942(*z*), to the 31st March, 1943(*a*), to the 31st March, 1944(*b*), and to the 31st March, 1945(*c*).

VENEREAL DISEASES.

Venereal diseases are contagious but are not notifiable diseases. In areas where the Ministry of Health have approved a scheme for the gratuitous treatment of venereal diseases, an order may be made applicable to that area prohibiting any person other than a registered medical practitioner from treating persons suffering from such diseases(*d*).

Every county and county borough council must make arrangements for enabling any medical practitioner practising in their area to obtain a report on any material submitted from a patient suspected to be suffering from venereal disease(*e*). Such councils must administer a scheme, to be approved by the Minister of Health, for the treatment at and in hospitals or other institutions of persons suffering from venereal disease, and for supplying medical practitioners with salvarsan or its substitutes for the treatment and prevention of the disease(*f*). The expression "venereal disease" means syphilis, gonorrhoea or soft chancre(*g*).

(*x*) Cancer Act, 1939, sect. 1.

(*y*) Ministry of Health Circular 1884, 16th October, 1939.

(*z*) Ministry of Health Circular 2062, 1st July, 1940.

(*a*) Ministry of Health Circular 2469, 30th August, 1941.

(*b*) Ministry of Health Circular 2707, 31st October, 1942.

(*c*) Ministry of Health Circular 2854, 6th September, 1943.

(*d*) Sect. 1, Venereal Diseases Act, 1917; 11 Halsbury's Statutes 741.

(*e*) Public Health (Venereal Diseases) Regulations, 1916; S.R. and O., 1916, No. 467.

The qualifications of the officers concerned in dealing with venereal disease—venereal diseases officer and venereal diseases pathologist—have been prescribed(*h*).

In accordance with the Brussels Agreement, 1924(*i*), venereal diseases centres have been established in all the chief sea and river ports, and arrangements made for all necessary diagnosis and treatment. It is the duty of the port health officer to furnish printed information to merchant seamen as to the treatment facilities available.

In order to provide proper treatment for those persons who refuse to attend voluntarily at a hospital or treatment centre, powers were conferred on the Minister of Health(*k*), enabling him to authorise medical officers of health, in certain circumstances, to require the attendance of persons suffering from venereal diseases for treatment. In accordance with these powers, the Minister made the Venereal Diseases Rules, 1942(*l*). Full details of the procedure to be followed in the administration of these Rules is contained in Circular 2727 of the Ministry of Health(*m*), and the special circular issued to medical officers of health by the Chief Medical Officer to the Ministry of Health on the same date. Briefly, the Defence Regulation makes it an offence for any person, indicated as the source of their infection by two or more separate patients under treatment for a venereal disease, after being required by the medical officer of health of a county or county borough council, to undergo examination and if necessary treatment by a special practitioner, to fail to do so or to cease treatment until certified as not suffering from the disease in a communicable form.

HOSPITALS.

A county council or a local authority are empowered by section 181 of the Act of 1936(*n*) to provide hospitals for the treatment of the sick, including clinics, dispensaries and out-patient departments. Where they have not already done so, as provided by section 63 of the Local Government Act, 1929(*o*), a county council must make a survey of the means available for the isolation and treatment of persons suffering from infectious disease within the county, and they

(*h*) Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930; S.R. and O., 1930, No. 69.

(*i*) Treaty Series (1926), No. 20, ratified by Great Britain in 1925.

must submit to the Minister of Health a scheme for securing adequate provision for such purpose(*p*).

It has been held that a local authority may establish a hospital within the area of another authority without obtaining the consent of the latter authority(*q*). Regarding the treatment and management of patients in hospital, it has been held that a local authority are only bound to use reasonable skill and care in the selection of staff and the authority cannot be held liable for the acts of such staff(*r*), although the failure of the medical officer to advise the local authority to close a maternity home upon the occurrence of infectious disease may render the authority liable in a claim for damages(*s*). A local authority, in exercise of their right to provide a hospital for infectious diseases, are not entitled to create a nuisance(*t*), and this decision has been followed in many other cases(*u*).

MISCELLANEOUS PROVISIONS RELATING TO INFECTIOUS DISEASES.

(a) **Shellfish.**—Owing to the risk of enteric fever and other intestinal diseases being spread by the consumption of infected shellfish, the Public Health (Shellfish) Regulations, 1934(*x*), enable control to be exercised in the case of suspected shellfish.

Article 2 defines "layings" as any place where shell fish are taken or deposited. The expression "local authority" means a port health authority, the common council of the City of London, the council of a metropolitan borough and the council of an urban or rural sanitary district.

Article 3 requires the medical officer of health to ascertain the layings from which any shellfish are derived if it appears that disease (infectious or not) has been conveyed or is likely to be caused by such shellfish, and to report to the local authority. The authority may require fishmongers to supply particulars as to the origin of any consignments of shell fish received during the past six weeks.

If the layings are situated outside the district of the local authority *Article 4* requires the information to be forwarded to the appropriate

(*p*) Sect. 185, Public Health Act, 1936; 29 Halsbury's Statutes 450.

(*q*) Withington Local Board of Health *v.* Manchester Corpn., [1893] 2 Ch. 19; 36 Digest 175, 210.

(*r*) *Evans v. Liverpool Corpn.*, [1906] 1 K.B. 160; 34 Digest 550, 86.

(*s*) *Marshall v. Lindsey County Council*, [1935] 1 K.B. 516, C.A.; [1936] All E.R. 1076, H.L.; Digest Supp.

(*t*) *Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193; 38 Digest 44, 256.

(*u*) See cases cited in the notes to s. 181 of the Act, Lumley's Public Health, 11th Edition.

authority, whose medical officer of health must investigate the suspected layings, submit reports, including bacteriological reports, to his council.

Article 5 enables a local authority, if satisfied that there is danger to the public health, to prohibit the sale of shellfish from the layings in question, unless the shellfish are cleansed, relaid or sterilised by an approved process. Before making the order, the local authority must issue at least twenty-one days' notice and reasonable opportunities must be given to interested persons to make representations to the local authority. In the case of public layings, the notice must be in the form of posters, etc., and in the case of private layings, the notice must be sent to every owner or tenant. Copies of any notices issued must be sent to the local sea fisheries committee.

Article 6 requires that notice of the order must be published in the local press and served on every owner or tenant of a private laying, and warning notices posted in respect of public layings. *Article 7* requires notice of the order to be given to the Minister of Agriculture and Fisheries and to the Minister of Health. Any person aggrieved by the making of an order, is empowered by *Article 9* to appeal to the Minister of Health within a period of 14 days.

Article 8 requires the authority in whose area the layings are situated to inform the local authority who made the original investigation, as to the steps being taken to deal with the matter, and if the latter authority are dissatisfied with the action taken, they may appeal to the Minister of Health.

Article 10 requires a local authority to revoke or vary an order as soon as they are satisfied that danger to health no longer exists. The Minister of Health and the Minister of Agriculture and Fisheries must be informed of the reasons for the variations or revocation of the order.

A county council or a local authority may provide tanks or other apparatus for cleansing shellfish (including the subjection of shellfish to any germicidal treatment) and may make charges in respect of their use. Such authorities may contribute towards the expenses incurred under this section by any other council or any joint committee, or towards the expenses incurred by any other person in providing for public use, means for cleansing shellfish. These provisions do not entitle an authority or person to establish any tank or other apparatus, on, over, or under tidal lands below high-water mark, unless the approval of the Board of Trade is obtained(y).

(b) **Psittacosis.**—Psittacosis is a disease conveyed to man by means of parrots and birds, and in order to prevent the spread of infection, the Minister of Health has made Regulations(z) governing the importation of parrots, enforceable by port health authorities. The term "parrot" means birds of the species psittaciformes, and includes parrots, parrakeets,

(y) Sect. 39, Food and Drugs Act, 1938; 31 Halsbury's Statutes 279.

(z) Parrots (Prohibition of Importation) Regulations, 1930, S.R. and O., 1930 No. 900

lovebirds, macaws, cockatoos, cockatiels, conures, caiques, lorries and lorikeets. The Regulations prohibit the importation of these birds except in the case of birds required for medical or veterinary research or consigned to the London Zoological Society, or to a person specially authorised by the Minister of Health to import parrots otherwise than for sale.

The master of a ship must notify the customs officer on arrival as to the presence of a parrot on his ship, and he must also inform the owner of the bird as to the prohibition. The customs officer must detain the parrot and notify the medical officer of health, who must order its destruction unless satisfied that it will be re-exported in the same ship. If the bird appears to be diseased the medical officer may order its destruction.

(c) **Provision of Laboratories.**—In order to carry out bacteriological, chemical or other examinations connected with the diagnosis or treatment of diseases, a county council or local authority are empowered by section 196 of the Act of 1936(*a*) to provide laboratories, and by section 67, Food and Drugs Act, 1938(*b*), for the bacteriological and other examination of samples of food and drugs.

It is the function of the Ministry of Health to make arrangements for the provision of a bacteriological service for controlling the spread of infectious disease in the event of war(*c*).

(d) **Provision of ambulances.**—Section 197 of the Act of 1936(*d*) enables a county council or local authority to provide ambulances and make a charge for the use thereof. A local authority are empowered to recover expenses of maintenance of patients in certain institutions(*e*). Such expenses may include a reasonable charge for the patient's removal to and from the institution(*f*).

Under the Air-Raid Precautions (General Schemes) Regulations, 1938(*g*), scheme making authorities are required to organise ambulance services. The driver of such an ambulance

(*a*) 29 Halsbury's Statutes 457.

(*b*) 31 Halsbury's Statutes 294.

(*c*) Sect. 50, Civil Defence Act, 1939; 32 Halsbury's Statutes 864; see also Ministry of Health Memorandum, Emergency Medical Services, No. 2, and Cmd. 6061 (1939).

(*d*) 29 Halsbury's Statutes 458.

(*e*) Sect. 184, Public Health Act, 1936; 29 Halsbury's Statutes 449; and see p. 450, *ante*.

may use a bell(*h*), and the ambulance may carry an illuminated sign(*i*).

(e) **Health propaganda.**—Section 179 of the Act of 1936(*k*) enables a county council or local authority to incur expenditure in publishing within their district information on questions relating to health or disease, and for the delivery of lectures and the display of pictures or cinematograph films in which such subjects are dealt with, subject to such conditions and restrictions, if any, as may be prescribed by the Minister of Health by Regulations. Regulations have not yet been made under this section.

(f) **Diseases of animals.**—Certain diseases of animals scheduled under the Diseases of Animals Acts, 1894 to 1935(*l*), may be transmitted to man, and in the following cases, the inspector of the local authority under the Diseases of Animals Acts, must notify the local medical officer of health, *viz.* :—

- (i)—glanders and farcy(*m*) ;
- (ii)—rabies(*n*) ;
- (iii)—anthrax(*o*) ;
- (iv)—foot and mouth disease(*p*).

A case of anthrax occurring in a factory must be notified by the employer and medical practitioner to H.M. Inspector of Factories(*q*) (and see *ante*, p. 346). Wool or hair from certain countries may be imported only at Liverpool and must be properly disinfected at that port(*r*). With a view to preventing the spread of anthrax by the use of infected shaving brushes, the importation of shaving brushes from Japan has been prohibited(*s*).

(*h*) Control of Noise (Defence) (No. 2) Order, 1939, reg. 3(f) ; S.R. and O., 1939, No. 1544 ; 32 Halsbury's Statutes 1381.

(*i*) Lighting (Restrictions) Order, 1940, reg. 28 ; S.R. and O., 1940, No. 74.

(*k*) 29 Halsbury's Statutes 446.

(*l*) 1 Halsbury's Statutes 389-441.

(*m*) Glanders or Farcy Order, 1938, S.R. and O., 1938, No. 228.

(*n*) Rabies Order, 1938, S.R. and O., 1938, No. 202.

(*o*) Anthrax Order, 1938, S.R. and O., 1938, No. 204.

(*p*) Foot and Mouth Disease (Amendment) Order, 1938, S.R. and O., 1938, No. 192.

(*q*) Sect. 66, Factories Act, 1937 ; 30 Halsbury's Statutes 247.

(*r*) S.R. and O., 1921, No. 352 ; and S.R. and O., 1935, No. 164.

(*s*) Anthrax Prevention (Shaving Brushes) Order, 1920, S.R. and O., 1920, No. 253.

CHAPTER 20.

DISINFECTION.

One of the most important duties of local authorities in regard to the prevention of the spread of infectious diseases is the disinfection of articles and premises. In order to enable them to disinfect articles, a local authority are empowered by section 166 of the Act of 1936(*a*), to provide a disinfecting station, at which articles may be disinfected free of charge, and section 271 of the same Act(*b*), enables such premises to be provided with furniture, apparatus and instruments which may be reasonably required for the purpose of disinfection. Subsection (2) of section 271, *supra*, empowers an authority to enter into an agreement with another authority for the use of a disinfecting station and subsection (3) enables one local authority to permit another authority to use their disinfecting station.

Local authorities are empowered by section 106 of the Local Government Act, 1933(*c*), to appoint officers and servants for the efficient discharge of their duties, and this power enables them to appoint staff for carrying out the work of disinfection. A common practice is to arrange for the ambulance drivers or drain testers to also do work of disinfection, and most Public Health Departments have one or more men permanently engaged on work of this kind.

DISINFECTION OF PREMISES AND ARTICLES.

Section 167 of the Act of 1936, *infra*, contains the powers relating to the disinfection of premises and articles.

Section 167, Public Health Act, 1936. Cleansing and disinfection of premises and articles therein.

- (1) If a local authority are satisfied upon a certificate of the medical officer of health of the district that the cleansing and disinfection of any premises, and the disinfection or destruction of any articles therein likely to retain infection, would tend to prevent the spread of any infectious disease, the authority shall give notice to the occupier of the premises that they will at his cost cleanse and disinfect the premises and disinfect or, as the

(a) 29 Halsbury's Statutes 440.

(b) 29 Halsbury's Statutes 497.

case may require, destroy any such articles therein, unless, within twenty-four hours after the receipt of the notice, he informs them that within a time to be fixed by the notice he will take such steps as are specified therein.

- (2) If within twenty-four hours after receipt of the notice the person to whom it is given does not inform the authority as aforesaid, or if, having so informed the authority, he fails to take such steps as aforesaid to the satisfaction of the medical officer of health, within the time fixed by the notice, the authority may cause the premises to be cleansed and disinfected and the articles to be disinfected or destroyed, as the case may require, and may, if they think fit, recover from him the expenses reasonably incurred by them in so doing.
- (3) Where the occupier of any premises is in the opinion of the local authority unable effectually to take such steps as they consider necessary, they may, without giving such notice as aforesaid but with his consent, take the necessary steps at their own cost.
- (4) Where a local authority have under this section disinfected any premises or article, or destroyed any article, they may, if they think fit, pay compensation to any person who has suffered damage by their action.
- (5) For the purposes of this section, the owner of unoccupied premises shall be deemed to be in occupation thereof.

This section re-enacts in a more simplified form various sections of the repealed Public Health Acts relating to disinfection. It will be observed that a local authority cannot take action except upon a certificate of the medical officer of health. Upon receipt of such a certificate the local authority *must* serve notice upon the occupier of the premises (or the owner in the case of unoccupied premises) requiring the work of disinfection to be carried out within twenty-four hours.

If the person receiving the notice fails to carry out the work of disinfection within the period of time specified, the local authority may do so and may, if they think fit, recover the cost incurred. In practice, however, it is the general rule for the work of disinfection to be carried out at the expense of the local authority, with the consent of the occupier, as provided by subsection (3) of section 167, *supra*. It will be observed that in such circumstances it is unnecessary to serve any notice. In the majority of cases it is quite impossible for an occupier of premises to disinfect satisfactorily, either infected articles or premises, and it is much more convenient for the work to be done by the local authority, who possess properly trained staff, together with the necessary apparatus. In practice, therefore, the provisions of section 167, *supra*, regarding the service of notice, will only be required in cases where the occupier of premises refuses to permit the

work of disinfection to be carried out by and at the expense of the local authority.

Section 167, *ante*, p. 478, enables infected articles to be destroyed. This will apply particularly in the case of badly soiled bedding, personal clothing, etc.

Payment of compensation.—Subsection (4) of section 167, *supra*, enables a local authority to pay compensation to any person who sustains damage as a result of any work of disinfection, or as a result of the destruction of any infected articles. In addition, section 278 of the Act of 1936 (see *ante*, p. 82), requires an authority to pay full compensation to any person who sustains damage by reason of the exercise by the authority of any of their powers under the Act, provided such person is not himself in default. In a county court case, a local authority were held liable to pay compensation even if the damage sustained was necessary for the work of disinfection and the work was carried out with the consent of the owner(*d*). A medical officer of health has no power to order the destruction of infected bedding(*e*), although it was suggested in this case that as a matter of great urgency, it might be proper for the medical officer to do so, the local authority confirming his action later.

Temporary removal of inmates for purposes of disinfection.

—Where considered necessary, a local authority are empowered by section 168 of the Act of 1936, *infra*, to remove any person from premises whilst the work of disinfection is carried out. If such a person does not consent to be removed, a justice may, by order, require him to do so.

Section 168, Public Health Act, 1936.—Power of local authority to remove temporarily inmates of infected house.

- (1) When any infectious disease occurs in a house, or the local authority deem it necessary to disinfect any house, the authority may, on a certificate of the medical officer of health of the district—
 - (a) cause any person who is not himself sick and who consents to leave the house, or whose parent or guardian, where the person is a child, consents to his leaving the house, to be removed therefrom to any temporary shelter or house accommodation provided by the authority;
 - (b) cause any such person to be so removed without any consent, if a justice of the peace (acting, if he deems it necessary, *ex parte*) is satisfied, on the application of the authority, of the necessity for the removal and makes an order for the removal, subject to such conditions, if any, as may be specified in the order.

- (2) The local authority shall in every case cause the removal to be effected and the conditions of any order to be satisfied without charge to the person removed, or to the parent or guardian of that person.
- (3) A local authority may provide temporary shelter or house accommodation for the purposes of this section.

It should be observed that the local authority are expressly empowered to provide the accommodation required, and the whole cost thereof must be borne by the authority.

DISINFECTIOIN OF SPECIAL PREMISES, ARTICLES, ETC.

In addition to the general powers of disinfection detailed previously, there are various special duties with regard to disinfection, relating to the following :—

- | | |
|--|---|
| (i) Disinfection of infected articles before being sent to laundries, etc. ; | (vi) Leaving houses without having them disinfected ; |
| (ii) Library books ; | (vii) Public conveyances ; |
| (iii) Infectious matter in dustbins ; | (viii) Lodging houses ; |
| (iv) Letting houses without being disinfected ; | (ix) Factories ; |
| (v) Letting rooms in hotels or inns without being disinfected ; | (x) Canal boats ; |
| | (xi) Markets ; |
| | (xii) Cowsheds and dairies ; |
| | (xiii) Ships ; |
| | (xiv) Tents, vans and sheds ; |
| | (xv) Ambulances ; |
| | (xvi) Aircraft. |

(i) **Disinfection of infected articles before being sent to laundries, etc.**—Articles must not be sent to a laundry, public washhouse or for purposes of cleaning, if they have been exposed to infection, unless they have been properly disinfected or are sent with proper precautions to a laundry for the purpose of disinfection, with notice that they have been exposed to infection(f).

(ii) **Library books.**—Section 155 of the Act of 1936 (see *ante*, p. 442), requires a local authority to cause every book which has been exposed to infection to be properly disinfected and returned to the library, or to be destroyed.

(iii) **Infectious matter in dustbins.**—No person may place any matter which he knows to have been exposed to infection from a notifiable disease into a refuse receptacle, unless it has been disinfected(g).

(iv) **Letting houses without being disinfected.**—Subsection (2) of section 157 of the Act of 1936 (see *ante*, p. 443) imposes a penalty upon any person who lets any house or part of a house

in which a person has to his knowledge, been suffering from a notifiable disease, unless the house and all articles in it, have been disinfected to the satisfaction of the medical officer of health or some other registered medical practitioner.

(v) **Letting rooms in hotel or inn without being disinfected.**—Subsection (3) of section 157 (see *ante*, p. 443) imposes a penalty under similar conditions, upon the keeper of an hotel or inn who allows a room therein to be occupied by any person, unless it has been properly disinfected.

(vi) **Leaving houses without having them disinfected.**—If any person ceases to occupy a house or part of a house in which to his knowledge a person has within six weeks previously been suffering from a notifiable disease, and fails to have the house or part of the house, and all the articles therein, properly disinfected, he is liable to a penalty(*h*).

(vii) **Public conveyances.**—Subsection (3) of section 160 of the Act of 1936 (see *ante*, p. 445) requires the owner of a public conveyance which has been used by a person suffering from a notifiable disease, to notify the medical officer of health and before the vehicle is used again, it must be properly disinfected. Any loss or expense incurred by the owner of the conveyance may be recovered from the person conveyed or from the person causing the infected person to be conveyed. Subsection (5) of section 160, *supra*, requires a local authority to carry out the disinfection of a public conveyance, upon the request of the owner, free of charge, unless the owner knew that the person conveyed was suffering from a notifiable disease.

If any person knowing that he is suffering from a notifiable disease, or being in charge of a person suffering from such a disease, enters or permits such other person to enter, a public conveyance, or other conveyance (without notice to the owner or driver of such other conveyance), he is liable to a penalty, and in addition the court *must* order the person convicted to pay a sum sufficient to cover any loss and expense incurred by the owner, driver or conductor, in connection with the disinfection of the conveyance(*i*).

(viii) **Lodging-houses.**—A local authority are empowered by section 240 of the Act of 1936 (see *ante*, p. 408), to make byelaws relating to common lodging-houses, and such byelaws may contain clauses dealing with disinfection.

The medical officer of health must be notified immediately

after the death, removal or recovery of any lodger who may have been suffering from a notifiable disease, and every part of the room occupied by such lodger must be thoroughly disinfected, and every article in the room liable to retain infection must be disinfected or destroyed, according to the instructions of the local authority. When the disinfection has been completed, written notice must be sent to the medical officer of health, and no other lodger is to be received into the room until two days after the giving of the notice(*k*).

(ix) **Factories.**—Section 153 of the Act of 1936 (see *ante*, p. 341) enables a local authority to prohibit home work being carried on in premises where a case of notifiable disease occurs, until the premises have been disinfected to the satisfaction of the medical officer of health.

A district council is responsible for the enforcement of section 1 of the Factories Act, 1937(*l*), in so far as the cleanliness of factories in which mechanical power is not used is concerned(*m*), except in the case of certain factories(*n*).

(x) **Canal boats.**—The provisions of the Act of 1936 relating to disinfection apply in the case of canal boats, by virtue of section 254 (see *ante*, p. 383), which also empowers a local authority to take all steps necessary with a view to preventing the spread of infection. Regulations 12 and 13 of the Canal Boats Regulations also relate to the prevention of infectious diseases (see *ante*, p. 383).

(xi) **Markets.**—The Markets, Sales and Lairs Orders, 1925(*o*), 1926(*p*) and 1927(*q*), issued by the Minister of Agriculture and Fisheries, require all market places and lairs used for the temporary accommodation of animals in connection with their sale, to be properly cleansed and disinfected. The disinfectant used must be approved(*r*).

(xii) **Cowsheds and dairies.**—Article 22 of the Milk and Dairies Order, 1926(*s*), requires every cowkeeper to limewash or otherwise disinfect the walls and ceilings of every cowshed at least twice in each year, once during April or May and once during September or October.

(*k*) Ministry of Health, Model Byelaws Series III.

(*l*) 30 Halsbury's Statutes 207; and see *ante*, p. 319.

(*m*) *Ibid.*, sect. 8(2); *ibid.*, 211; and see *ante*, p. 347.

(*n*) See the Local Authorities (Transfer of Enforcement) Order, 1938; S.R. and O., 1938, No. 488.

(*o*) S.R. and O., 1925, No. 1349.

(*p*) S.R. and O., 1926, No. 546.

(*q*) S.R. and O., 1927, No. 982.

(*r*) Diseases of Animals (Disinfection) Order, 1938, S.R. and O., 1938, No.

(xiii) **Ships.**—Section 267 of the Act of 1936 (see *ante*, p. 83), applies the provisions of Part V of the Act, relating to disinfection, to any vessel lying in any inland or coastal water, as if such vessel were a house, building or premises, and the master or other officer or person in charge of the vessel, were the occupier.

The Port Sanitary Regulations, 1933(*t*), contain provisions relating to the cleansing and disinfection of ships, persons, clothing and other articles, which have been exposed to infection, and port health authorities are empowered to carry out the necessary work of disinfection.

(xiv) **Tents, vans and sheds.**—Similarly, the provisions of Part V. of the Act of 1936 relating to disinfection, are applied to tents, vans, sheds and similar structures, by virtue of section 268 of the Act of 1936 (see *ante*, p. 395), as if such tent, etc., were a house or building.

(xv) **Ambulances.**—Where an ambulance is used for the conveyance of a person suffering from an infectious disease, the county council or local authority, providing the ambulance, must not allow it to be used again until it is properly disinfected(*u*).

(xvi) **Aircraft.**—Provisions relating to the disinfection of aircraft used by persons suffering from plague, cholera, yellow fever, typhus fever, or smallpox, or by persons in contact with cases of any of those diseases, or aircraft from places where such diseases are present, are contained in the Public Health (Aircraft) Regulations, 1938(*x*).

FILTHY OR VERMINOUS PREMISES, ARTICLES AND PERSONS.

Local authorities are devoting an increasing amount of attention to the eradication of vermin, and the work of disinfection is of considerable importance. Local authorities are empowered by sections 83 to 86 of the Act of 1936 to deal with verminous persons, premises and articles, and the provisions of these sections apply to vessels lying in any inland or coastal waters as if the vessel were a house and the master or other officer in charge were the occupier(*y*), and to tents, vans, sheds and similar structures as if such structures were a house or building(*z*).

(*t*) S.R. and O., 1933, No. 38 ; and see *ante*, p. 452.

(*u*) Sect. 197, Public Health Act, 1936 ; 29 Halsbury's Statutes 458.

(*x*) S.R. and O., 1938, No. 299 ; and see *ante*, p. 462.

(*y*) Public Health Act, 1936. sect. 267. *ante*. p. 83.

Provision of cleansing stations.—Section 86 of the Act of 1936 enables a county council or a local authority to provide such cleansing stations as may be necessary for the proper discharge of their powers under sections 83 to 85 of that Act.

Verminous premises.—Where a local authority are satisfied, upon the certificate of the medical officer of health or sanitary inspector, that any premises are in a filthy or verminous condition, the authority *must* serve a notice upon the owner or occupier of the premises, in accordance with section 83 of the Act of 1936, *infra*, requiring the necessary work of cleansing, disinfection or disinfestation to be carried out. In the case of verminous premises, it will be observed that the notice may require the removal of paper or other covering from the walls.

Section 83, Public Health Act, 1936.—Cleansing of filthy or verminous premises.

(1) Where it appears to a local authority upon a certificate of the medical officer of health or the sanitary inspector that any premises used for human habitation—

- (a) are in such a filthy or unwholesome condition as to be prejudicial to health; or
- (b) are verminous,

the authority shall give notice to the owner or occupier of the premises requiring him to take such steps to remedy the condition of the premises by cleansing, disinfecting and white-washing them, as may be specified in the notice, and in the case of verminous premises the notice may require, among other things, the removal of the wallpaper or other covering on the walls, and the taking of such other steps as may be necessary for the purpose of destroying or removing vermin.

(2) If a person on whom a notice under this section is served fails to comply with the requirements thereof, the authority may themselves carry out the requirements and recover from him the expenses reasonably incurred by them in so doing, and, without prejudice to the right of the authority to exercise that power, he shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor:

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements or of their decision to address their notice to him and not to the occupier, or, as the case may be, the owner of the premises.

(3) Where a local authority take action under paragraph (b) of subsection (1) of this section, their notice may require that they shall be allowed to employ gas for the purpose of destroying vermin on the premises, but in that case the notice shall be served both on the owner and on the occupier of the premises, and the authority shall bear the cost of their operations and

may provide temporary shelter or house accommodation for any person compelled to leave the premises by reason of their operations.

The expression "premises" includes "messuages, buildings, lands, easements and hereditaments of any tenure" and the expression "vermin" in its application to insects and parasites includes their eggs, larvae, and pupae, and the expression "verminous" is to be construed accordingly(a).

Verminous articles.—Section 84 of the Act of 1936, *infra*, requires a local authority, upon the certificate of the medical officer of health or the sanitary inspector, to cleanse, purify, disinfect or destroy, any filthy or verminous article.

Section 84, Public Health Act, 1936.—Cleansing or destruction of filthy or verminous articles.

Where it appears to a local authority upon a certificate of the medical officer of health or the sanitary inspector that any article in any premises—

- (a) is in so filthy a condition as to render its cleansing, purification, or destruction necessary in order to prevent injury, or danger of injury, to the health of any person in the premises; or
- (b) is verminous, or by reason of its having been used by, or having been in contact with, any verminous person is likely to be verminous,

the local authority shall cause that article to be cleansed, purified, disinfected or destroyed, as the case may require, at their expense and, if necessary for that purpose, to be removed from the premises.

Subject to the provisions of section 278, Public Health Act, 1936(b), a local authority must pay full compensation to any person who has sustained damage by reason of the exercise by the authority of any of their powers under the Act of 1936 in relation to a matter as to which he has not himself been in default. In case of dispute, the fact of damage or the amount of compensation must be determined by arbitration (see *ante*, p. 81).

Verminous persons.—Section 85 of the Act of 1936, *infra*, enables a local authority to deal with verminous persons. As with the case of verminous premises or articles, action can only be taken upon the certificate of the medical officer of health or the sanitary inspector, and where a person does not consent to go to a cleansing station, a court of summary jurisdiction may, by order, compel him to do so.

(a) Public Health Act, 1936, sect. 90; 29 Halsbury's Statutes 392.

(b) 29 Halsbury's Statutes 500.

It should be noted that the local authority cannot make a charge for the cleansing or disinfestation of persons under this section.

Section 85, Public Health Act, 1936.—Cleansing of verminous persons and their clothing.

- (1) Upon the application of any person, a county council or a local authority may take such measures as are, in their opinion, necessary to free him and his clothing from vermin.
- (2) Where it appears to a county council or a local authority, upon a report from their medical officer of health or, in the case of a local authority, from their sanitary inspector, that any person, or the clothing of any person, is verminous, then, if that person consents to be removed to a cleansing station, they may cause him to be removed to such a station, and, if he does not so consent, they may apply to a court of summary jurisdiction, and the court, if satisfied that it is necessary that he or his clothing should be cleansed, may make an order for his removal to such a station and for his detention therein for such period and subject to such conditions as may be specified in the order.
- (3) Where a person has been removed to a cleansing station in pursuance of the last preceding subsection the county council or local authority shall take such measures as may in their opinion be necessary to free him and his clothing from vermin.
- (4) The cleansing of females under this section shall be carried out only by a registered medical practitioner or by a woman duly authorised by the medical officer of health.
- (5) Any consent required to be given for the purposes of this section may in the case of a person under the age of sixteen years be given on his behalf by his parent or guardian.
- (6) No charge shall be made in respect of the cleansing of a person or his clothing or in respect of his removal to or maintenance in, a cleansing station under this section.
- (7) The powers conferred on a county council or local authority by this section shall be in addition to, and not in derogation of, any power in relation to the cleansing of children which may be exercisable by them as a local education authority.

With regard to *school children* who are verminous, local education authorities may direct the school medical officer or a person having the written authority of such officer(c) to examine the children's bodies and clothes for vermin. They may call upon the parents to cleanse infested children and if the latter fail to do so within twenty-four hours, the authority may remove the children to a cleansing station for disinfestation. The sanitary authority having a cleansing station must place it at the disposal of the education authority on terms to be agreed by the two bodies(d).

(c) Usually the school nurse.

Verminous ships.—The medical officer of health is empowered to require the master of a ship to take such steps as are reasonably necessary for the destruction of vermin and the removal of conditions likely to encourage the harbourage of vermin(*e*). The medical officer of health is also required to arrange for the cleansing from vermin of infected articles upon a plague-infected or suspected ship, and for disinsecting infected articles on a ship which has had a case of typhus fever on board within the previous six weeks(*f*).

HYDROGEN CYANIDE FUMIGATION.

Hydrogen cyanide (HCN), or prussic acid, is an extremely poisonous gas, which has proved of great value in dealing with verminous premises and articles. Owing to its highly toxic nature, however, it can only be used with the greatest care. As a result of a number of fatal accidents, the Hydrogen Cyanide (Fumigation) Act, 1937(*g*), was passed with the object of regulating the process of fumigation of premises and articles with hydrogen cyanide.

The Act empowered the Secretary of State to make regulations with respect to hydrogen cyanide fumigation, which may—

- (a) regulate the manner in which the hydrogen cyanide is to be generated and require the admixture therewith of any substance ;
- (b) prohibit the carrying out of any such fumigation except by or under the supervision of persons having such training or experience as may be specified in the regulations and by such number of persons as may be so specified ;
- (c) regulate the disposal of the residues of any substances used in the fumigation ; and
- (d) for the purpose of preventing injurious effects resulting from the fumigation, impose temporary restrictions upon the use of any premises or article and require such tests as may be specified in the regulations to be carried out after the fumigation.

Regulations made under the Act do not apply to the fumigation of rabbit warrens or to fumigation carried out in the open air(*h*).

Whenever any accident which occasions loss of human life or personal injury occurs as the result of the fumigation of any premises or article, the person by whom, or by whose agent, the fumigation was carried out must forthwith send or cause to be sent to the Secretary of State notice of the accident and of the loss of human life or personal injury(*i*). The provisions of

(*e*) Article 30, Port Sanitary Regulations, 1933 ; S.R. and O., 1933, No. 38 ; and see *ante*, p. 455.

(*f*) *Ibid.*, Schedule IV.

(*h*) *Ibid.*, sect. 1 ; *ibid.*

(*g*) 30 Halsbury's Statutes 708.

(*i*) *Ibid.* sect. 2

sections 14 and 15 of the Petroleum (Consolidation) Act, 1928(*k*), which relate to inquiries into accidents and to coroners' inquests on deaths resulting from accidents, as set out with modifications in the Schedule to the Hydrogen Cyanide (Fumigation) Act, 1937(*l*), apply in relation to accidents of which notice is required by the Act to be given to the Secretary of State(*m*).

Section 4 of the Hydrogen Cyanide (Fumigation) Act, 1937(*n*), enables Orders in Council to be made applying the provisions of the Act to fumigations with gases other than hydrogen cyanide.

In accordance with the provisions of section 1, *supra*, the Secretary of State made the Hydrogen Cyanide (Fumigation of Buildings) Regulations, 1938(*o*), which came into operation on the 1st February, 1939.

The Regulations prescribe duties to be carried out by the undertaker(*p*), and the operator(*q*).

The duties of the *undertaker* are as follows :—

- (1) Notice in writing of any forthcoming fumigation(*r*) stating the description of the fumigation area(*s*) and of the risk area(*t*) and the date and time at which the fumigation will be commenced must be sent to the officer in charge of the police station nearest to the fumigation area and to the medical officer of health ; the notice must be sent so as to reach them not less than 48 hours before the time of commencement of the fumigation unless otherwise arranged with each of the officers concerned(*u*).
- (2) Any further particulars as to the carrying out of the fumigation which may be asked for by the medical officer of health must be supplied(*x*).
- (3) No fumigation shall be carried out except by an adequate fumigating staff.

One member of the fumigating staff must be designated in writing as the *operator* in charge of the fumigation.

The operator must have had not less than six months regular

(*k*) 13 Halsbury's Statutes 1179, 1181.

(*l*) 30 Halsbury's Statutes 710.

(*m*) *Ibid*, sect. 3 ; *ibid*.

(*n*) *Ibid*.

(*o*) S.R. and O., 1938, No. 1578.

(*p*) "Undertaker" means any person who, under contract or otherwise, undertakes the carrying out of a fumigation : Regulation 1.

(*q*) "Operator" means a person designated in writing by the undertaker to be in charge of the carrying out of a fumigation : Regulation 1.

(*r*) "Fumigation" means the fumigation with hydrogen cyanide of any building or part thereof : Regulation 1.

(*s*) "Fumigation area" means the building, or part of a building, undergoing fumigation : Regulation 1.

(*t*) "Risk area" means any part of a building into which there is any reason to apprehend that the fumigant may penetrate from the fumigation area, and, in any case, includes those parts of any building which are less than 30 feet from the nearest boundary of the fumigation area unless separated from the fumigation area by a yard, street or other open space not less than 10 feet in width : Regulation 1.

experience of fumigation together with in addition twelve months regular experience of fumigating with the fumigant one or both of the following, namely buildings and ships, and shall be otherwise competent for the purpose.

The fumigating staff must in all cases include two persons both of whom must be adequately trained in first aid(y).

- (4) A register or registers in the prescribed form in which the prescribed particulars must be entered in the prescribed manner, must be provided and must, except when in use by the operator for the purpose of paragraph (2) (b) of Regulation 13 (see *post*, p. 493), be kept at the office of the undertaker(z).
- (5) In connection with each fumigation a register as provided above, in which any particulars required to be entered by the undertaker prior to the fumigation must have been entered, must be handed to the operator(a).
- (6) Any such register must be preserved in good condition until a period of two years has elapsed from the date of the last entry (b).
- (7) The undertaker must take such steps as may be necessary to enable the operator to carry out the requirements of regulations 3 (3) (see *post*, p. 491), 5 to 9 inclusive (see *post*, p. 491), 11, 12 and 13 (2) (b) (see *post*, p. 492)(c); and
- (8) Generally to exercise such supervision and take such steps as are within his power to secure the due observance of the regulations by those engaged by him to carry out a fumigation(d).

It is the duty of the *operator* to secure that the requirements of regulations 4(3) (see *supra*), 5 to 12 (see *infra*), and 13(2)(b) (see *post*, p. 493) are complied with, and of all other persons employed in connection with the fumigation to co-operate with the operator for that purpose(e).

The hydrogen cyanide must not be liberated until—

- (a) all persons other than the fumigating staff have left the fumigation area and the risk area and, for the purposes of paragraphs (b), (c), (d), and of this paragraph, an exhaustive search has been carried out: and
- (b) all liquids or foodstuffs of such a kind or so stored as to be liable to absorb hydrogen cyanide have been removed from the fumigation area; and
- (c) all fires and naked lights in the fumigation area have been extinguished; and
- (d) every door or other means of access to the fumigation area or the risk area has been securely fastened so as to prevent access thereto and possession has been taken of the keys; and
- (e) notices containing, in block letters not less than two inches in height, the words " DANGER: POISON GAS: DO NOT ENTER " have been placed where they may readily be seen by any person approaching the fumigation area or the risk area: and

(y) Regulation 4.

(a) Regulation 13(2)(a).

(c) Regulation 2(1)(b).

(z) Regulation 13(1).

(b) Regulation 13(3).

(d) Regulation 2(1)(c).

(e) Regulation 2(2).

- (f) all practicable steps have been taken to seal all openings, cracks, or crevices so as to prevent the escape of the fumigant from the fumigation area ; and
- (g) the appropriate entries have been made in the prescribed register(f).

The *undertaker* may apply to the medical officer of health for exemption from the requirements of paragraph (b), *supra*, in cases in which any part of the fumigation area is used for the business of the manufacture or storage of foodstuffs, and the medical officer may grant a certificate of exemption on such conditions stated in the certificate as he may think necessary to prevent danger from the contamination of such foodstuffs by exposure to hydrogen cyanide. The medical officer of health must not either unreasonably refuse to grant such a certificate or impose unreasonable conditions(g).

Hydrogen cyanide must not be applied in such a manner as to be absorbed in liquid form by floors, walls, ceilings, or household effects ; nor in such quantities as to effect an average concentration exceeding 4 parts in 100 in any room or other part of the building(h).

All bedding, blankets, pillows, clothing, cushions and upholstered articles likely to absorb the hydrogen cyanide which have been exposed to the gas must, before the return of any occupants of the building, either—

- (a) have been treated in such manner and for such period as shall be effective to secure that they are free from danger and have been ascertained by tests, which, if any tests have been prescribed, must be the prescribed tests, to be so free ; or
- (b) be removed from the fumigation area, and shall not be restored thereto until they have been treated and tested as required in paragraph (a) *supra*(i).

After the liberation of hydrogen cyanide has commenced and until the fumigation area and the risk area are free from danger—

- (a) any member of the fumigating staff being in any part of those areas shall wear or carry ready for immediate use an efficient mask or other apparatus which affords complete protection to the wearer against the hydrogen cyanide ; and shall carry or have in his possession ready for immediate use an efficient electric torch ; and
- (b) there shall be constantly available first aid appliances and remedies, which, if any types of appliances or remedies have been prescribed, shall comply with the requirements and conditions of such prescription(h).

(f) Regulation 5.

(h) Regulation 6.

(g) Regulation 3(3).

(i) Regulation 12.

No other person, except a member of the fumigating staff is permitted to enter the fumigation area after fumigation until—

- (a) the fumigation area has been ventilated in such manner and for such period, which period shall not be less than 24 hours in the case of a dwelling house, as shall be effective to secure that the area is free from danger ; and
- (b) it has been established by tests, which, if any tests have been prescribed, must be prescribed tests, that the area is free from danger ; and
 - (i) an entry to that effect has been made in the register ; and
 - (ii) a certificate to that effect has been delivered or despatched to the medical officer of health ; and
- (c) all vessels or residues of the materials used for generating the hydrogen cyanide have been removed and safely disposed of ; and
- (d) all water contained in cisterns, tanks or otherwise in the fumigation area which may have become contaminated by the hydrogen cyanide has been run off^(l).

No person, other than a member of the fumigating staff, is permitted to enter the risk area—

- (a) while there is a high concentration of the hydrogen cyanide in the fumigation area, and
- (b) until—
 - (i) the risk area has been ventilated in such manner and for such period as shall be effective to secure that the area is free from danger, and
 - (ii) it has been established by tests, which, if any tests have been prescribed, must be the prescribed tests, that the area is free from danger, and an entry to that effect has been made in the register^(m).

During the period in which the fumigation area is under a high concentration of hydrogen cyanide, steps must be taken to keep under observation the risk area and any buildings adjoining thereto, in order to ensure the discovery of any penetration of hydrogen cyanide into such buildings ; and, in the event of any such penetration being discovered, all steps which are reasonably practicable must be taken to safeguard any occupants of such buildings⁽ⁿ⁾. At least one member of the fumigating staff, who must have possession of all keys of which possession has been taken in accordance with Regulation 5(d) (see *ante*, p. 490), must remain in attendance, and thereafter until the fumigation area and the risk area have been certified to be free from danger a member of the fumigating staff must either be in attendance or, if a responsible person employed by or acting under the directions of the undertaker for the purpose is in attendance, must be readily available^(o).

^(l) Regulation 8.
^(m) Regulation 10.

⁽ⁿ⁾ Regulation 9.
^(o) Regulation 11.

The *operator* must, at the appropriate times, enter any particulars required to be entered in the register(*p*).

The Hydrogen Cyanide (Fumigation of Buildings) Regulations do not apply to a fumigation carried out exclusively for agricultural or horticultural purposes of an agricultural or horticultural building no part of which is used for human habitation ; or to a fumigation carried out in any building, or part of a building, which building or part thereof has been specially constructed or adapted for the purpose of effecting the fumigation of any articles(*q*). This latter exemption is important, as a number of local authorities have established fumigation stations where furniture and other household effects are taken for purposes of fumigation. Such stations are not subject to the provisions of the Regulations.

(*p*) Regulation 13(2)(b).

(*q*) Regulation 14.



GENERAL INDEX.

Abbreviations used in Index.

C.D.C.	County District Council.
C.S.J.	Court of Summary Jurisdiction.
D.C.	District Council.
J.P.	Justice of the Peace.
L.A.	Local Authority.
M.O.H.	Medical Officer of Health.
M. of H.	Minister of Health.
My. of H.	Ministry of Health.
P.H.A.	Public Health Act.
R.D.C.	Rural District Council.
S.A.	Sanitary Authority.
S.I.	Sanitary Inspector.

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